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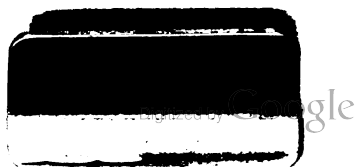
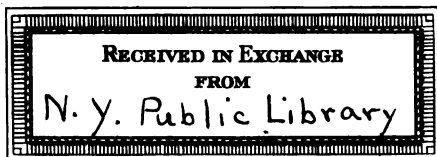
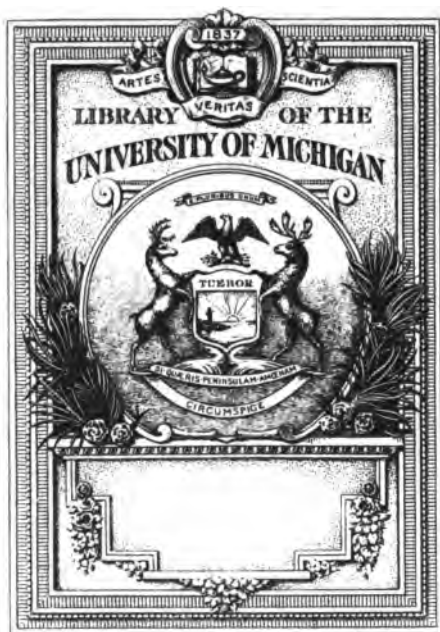
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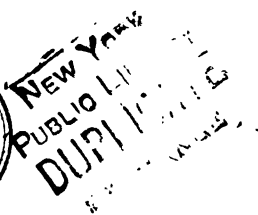
PUBLIC PAPERS

OF

FRANK W. HIGGINS

GOVERNOR

1905



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PUBLIC PAPERS
OF
GOVERNOR HIGGINS
1905

DESIGNATION OF SECRETARY TO THE
GOVERNOR

THE PEOPLE OF THE STATE OF NEW YORK

BY THE GRACE OF GOD FREE AND INDEPENDENT

To all to whom these Presents shall come Greeting:

KNOW YE That we have nominated constituted and appointed and by these presents do nominate constitute and appoint

FRANK E. PERLEY

SECRETARY TO THE GOVERNOR

hereby giving and granting unto him all and singular the powers and authorities to the said office by law belonging or appertaining.

TO HAVE AND TO HOLD the said office together with the fees profits and advantages to the same belonging for and

during the time limited by the Constitution and Laws of our said State.

IN TESTIMONY WHEREOF We have caused these
our letters to be made patent and the great
seal of our said State to be hereunto affixed.
[L S] Witness FRANK W. HIGGINS Governor of our
said State at our City of Albany the second day
of January in the year of our Lord one thousand
nine hundred and five.

(Signed) FRANK W. HIGGINS

Attest:

(Signed) JOHN F. O'BRIEN

Secretary of State

ANNUAL MESSAGE

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, January 4, 1905

TO THE LEGISLATURE:

Pursuant to the mandate of the Constitution I have the honor herewith to communicate to you by message the condition of the State, together with such recommendations as seem to me expedient at this time.

STATE DEBT.

On September 30, 1904, the close of the fiscal year, the total debt of the State amounted to \$9,410,660.00, classified as follows:

Adirondack Park.....	\$510,000 00
National Guard Public Defenses.....	400,000 00
Canals	8,500,660 00
Total	<u>\$9,410,660 00</u>

The sinking fund created by the annual tax of 13-100 of a mill per dollar of assessed valuation of real and personal property, provided by Chapter 79 of the Laws of 1895, amounted on the 30th of September, 1904, to \$3,696,493.55, which, in effect, reduces the amount of the canal debt to the sum of \$4,804,166.45 yet to be provided for. The debt maturing during the next fiscal year consists of \$55,000.00 Adirondack Park bonds issued pursuant to Chapter 561 of the Laws of 1895, maturing January 30, 1905, and \$200,000.00 National Guard Public Defense bonds issued pursuant to Chapter 672 of the Laws of 1898, \$100,000.00 of which mature on the first days of May and November respectively, and for the payment of which provision must be made by the Legislature.

RECEIPTS AND EXPENDITURES

The total receipts of the State Treasury from all sources for the year ending September 30, 1904, were \$25,548,962.98; the total payments were \$25,900,796.73, showing an excess of payments over receipts for the year amounting to \$351,833.75. The actual available surplus on October 1, 1904, was \$8,762,236.62. The total appropriations in force October 1, 1904, amount to \$26,735,457.70, which is \$2,319,228.07 more than the income of the last fiscal year which was applicable to the payment of appropriations, so that with the same revenue as last year there would be this excess of expenditures over receipts which must be met from the surplus. But the Comptroller estimates that the revenues for the present fiscal year applicable to the expenses of government will show a decided falling off as compared with the receipts for the fiscal year last past, unless provision be made by law for increased revenue from present sources or for new sources of revenue.

The satisfactory condition of affairs whereby the tax laws produced sufficient revenue for the requirements of the State

is threatened by the effect of very recent decisions rendered by the Court of Appeals in test actions brought and successfully maintained by corporations to obtain a construction favorable to them of the corporation tax laws, which decisions not only reduce current receipts by large sums to be credited as refunds of taxes, but establish new rules for future assessments at variance with the practice of the State in the past. Particular reference is made to the definition of "capital employed within this State" as laid down in the case of the Fort George Realty Company (179 N. Y., 49), and the construction placed upon the law imposing a tax upon premiums received by life insurance companies contained in the case of the Provident Savings Life Assurance Society (179 N. Y., 227).

It was impossible to foresee these decisions which are a great disappointment and surprise to the State authorities. While it is impossible to make an exact estimate of the shrinkage in revenue and of the amount of the refunds required that will result from this cause, the Comptroller estimates the loss at approximately \$1,750,000.00. He further estimates that there will be a shrinkage in the receipts from the transfer tax of \$1,000,000.00, based on the shrinkage of the first two months of the present fiscal year as compared with the first two months of the last fiscal year.

The extraordinary expenses of the present year will necessarily be large. Appropriations to meet the payment of judgments and other claims against the State must be made. We are confronted with a condition which is calculated to cause us to consider with utmost care the problem of adjusting receipts to expenditures. It seems unwise at this time to increase the burdens of taxation. The only alternative is the lowering of expenditures. It is obvious that while, if appropriations are sufficiently conservative, the surplus in the State Treasury is

sufficient to carry us through another year without increased taxation, a crisis is at hand and provision should be made to avert it.

APPROPRIATIONS AND TAXATION

Under our system of government the National and State Legislatures do not make up single budgets of appropriations, but many special appropriation acts are passed without much regard for the sum total thereof or for the relation it bears to the estimated revenue of the State. The finance committees of the two houses act to some extent as the responsible agencies of the Legislature to keep expenditures within the limits of the revenues of the State. I recommend that so far as possible the appropriations for the session be treated as a single act, that the amount thereof be kept close to the estimated indirect revenues for the ensuing year, and that they should not exceed \$22,000,000.00. This will call for serious reductions in certain directions without corresponding increases except where the same are imperatively demanded. I am aware that while economy in the abstract is universally commended, the application of the principle to particular instances is surrounded with difficulties, and I urge upon all interests a patriotic and unselfish consideration of the problem.

TAX LEGISLATION

The tax on the surplus and undivided profits of savings banks appears in its practical operation to be a tax upon the depositors, and is, therefore, contrary to the long-established policy of the State to exempt from taxation the savings of those who make use of these banks. The amount of the tax is charged against the current earnings of the bank and is not taken from the surplus, and it is claimed that the bank is, therefore, unable to pay the same rates of interest to depositors

as it would if the tax were not imposed. A reduction of the interest on these accounts is a hardship to those affected thereby, and I recommend the repeal of this tax. The receipts from this source for the past fiscal year were \$720,000.00, and the revenue thus lost must be made up; but at the same time justice seems to demand that this tax be abolished and that some more equitable method of raising the amount be resorted to.

I also recommend that the law be amended so as to meet the criticisms made by the Court in the tax cases above referred to, in order to secure to the State the revenue which it will otherwise lose if these decisions are allowed to control.

CENSUS

The Constitution of the State (Article III., Section 4) provides that an enumeration of the inhabitants of the State shall be taken, under the direction of the Secretary of the State, in the months of May and June, 1905. Since 1875 no complete census has been taken by the State, although in the years 1855, 1865 and 1875 the census was taken in a complete and thorough manner. The enumeration of 1892 was simply a count of the inhabitants of the State for the purpose of redistricting the State for the election of senators and members of assembly.

The value of a complete census is undoubtedly great, but such a census would cost at least \$600,000.00, while a mere enumeration could be had for about \$250,000.00. Considering the extensive work that is done by the Federal Government at the present time in taking the census under the permanent Census Bureau, whereby comprehensive statistics as to matters of public interest are collected and compiled, I am of the opinion that the State should conduct the enumeration at this

time at the lowest possible cost consistent with accuracy and thoroughness. I recommend that proper legislation be immediately adopted in order that the Secretary of State may be ready to begin active operations in the field at the earliest date possible.

INSANE AND CHARITIES

The management of the State Hospitals for the Insane, fourteen in number, with a total number of patients on October 1, 1904, of 25,019, was completely centralized by legislation of 1902, abolishing the boards of managers of the various hospitals and leaving with the Commission in Lunacy complete jurisdiction, both as to financial control and internal administration. The advantages of centralized control of the financial operations of the hospitals are evident. It is of the utmost importance, however, that this great system of hospitals, involving the expenditure of so large a sum of money annually and the care of so many thousands of peculiarly unfortunate and defenseless persons, should rest upon a broad basis of public interest and public confidence, and should retain the co-operation of philanthropic citizens throughout the State. In my opinion this can best be secured by leaving the control of all financial matters, as at present, in the hands of the Commission, and by providing for each hospital a board of managers, in general charge, through the superintendent, of the internal affairs of the hospital.

The present overcrowding of the State Hospitals, the large increase in the number of the insane each year, and the expiration — next September — of the lease of the buildings now occupied by 1,200 patients at the Long Island State Hospital at Flatbush, make it imperative to take action during the coming session for a material enlargement of State Hospital accommodations. This can probably best be met, in part, by

additional accommodations in existing hospitals, and in part by the establishment of a new State Hospital. In increasing the accommodations in existing institutions the importance of providing for each State Hospital a building especially adapted to the treatment of acute insanity should always be borne in mind.

It is not the duty of the State to maintain in the State Hospitals for the Insane, at the expense of the State, any insane person who has property or who has relatives legally chargeable with his support who are able, in whole or in part, to pay therefor. While the attorneys for the various State Hospitals have in many cases been able to collect the charges for support of inmates from the persons and property liable therefor, no effective check is placed upon the commitment as dependent insane of those who are not properly State charges. The rapid growth in the population of the insane hospitals since the adoption of the State Care Act is not entirely due to the increase in insanity in the State, but may to some extent be attributed to the practice of commitment of senile or feeble-minded relatives to the State institutions at the instance of those who are properly chargeable with their support. I recommend that before any insane person is permanently received as a State charge, the question be judicially investigated and determined whether such person is a pauper without relatives chargeable with his support and able to contribute thereto. The crowded condition of the State Hospitals would, in my judgment, be relieved if they were maintained strictly as institutions for the pauper or dependent insane. Mild cases of insanity in a purely technical sense, due to old age or other cause, where there is no more need for State treatment than in other cases of illness, should so far as possible be excluded from the State Hospitals and the patients cared for in the

home or elsewhere as persons afflicted with other diseases are cared for.

The most urgent need in connection with the State charitable institutions appears to be that of additional accommodations for the feeble-minded at the institutions at Newark and Rome. A substantial increase in the capacity of these institutions would make possible a transfer of many adult inmates from the School for Feeble-minded Children at Syracuse, and the reception there of many feeble-minded children who cannot now be accepted. The additional accommodations at Newark and Rome should be sufficient to provide also for the admission of many feeble-minded adults now in county poorhouses.

Great progress has been made during the past few years in improving the reformatory system of the State, and in providing proper buildings and equipment for the best reformatory work. With this end in view, the commitment of girls to the House of Refuge on Randall's Island and the State Industrial School at Rochester has been discontinued, and the former House of Refuge for Women at Hudson has been converted into a State Training School for Girls. The State Industrial School at Rochester is being transferred to a country site, and a commission has been appointed to select a new site for the boys' department of the House of Refuge on Randall's Island.

It would seem that some additional safeguards should be provided looking toward more public competitive bidding in the purchases made by the hospitals and State charitable and reformatory institutions, either by amendment of the law or by some set of rules and regulations to be adopted pursuant to statutory authority granted therefor. Purchases wherever possible should be made in bulk and in large quantities and from the lowest satisfactory bidder, after public advertisement for bids.

I recommend that all appropriations to enlarge or improve the State charitable and reformatory institutions be included in one bill with such provisions as will in every instance insure the most careful and economical expenditure of the moneys appropriated.

I also recommend that suitable legislation be enacted to enable the State Board of Charities to transfer in proper cases inmates from one charitable or reformatory institution to another, where it appears that such persons more properly belong in an institution of the State other than the one to which they were originally committed. Different classes of defectives should not be allowed to remain in the same institution if by a proper system of transfers they can be so distributed as to receive the best and most scientific care.

ADULT BLIND

Attention has been called by my predecessors to the fact that no provision is made by the State for the instruction and employment of the adult blind. I recommend that the Legislature continue to consider the advisability of devising suitable means for the industrial training of this class of unfortunates.

The expenditures from the State Treasury for the last fiscal year for charitable purposes were upwards of \$7,600,000.00, and of this amount only \$82,225.00 was expended for the blind, and then only for the education of blind children and youths. What nobler charity can the State maintain than that which aims to enable those who have become blind after reaching manhood to be self-supporting!

ELECTION REFORMS

It is the aim of the State so to guard the ballot box that an honest expression by the voters can be obtained. In the

larger cities, colonization, intimidation and false registration are the principal crimes against the franchise. Laws for the punishment of these offenses have already been enacted. Proper means for the detection of such crimes, however, have not been provided. In the smaller localities the general acquaintance which exists among the residents insures sufficient protection against illegal voting, but in the larger centers of population more perfect methods of identification should be provided. The law now provides that upon offering his name for registry, the elector shall state the place from which he voted last. I would suggest that in addition to this he should be required to state the time when he voted last. In the large cities the principal colonization frauds are perpetrated from lodging and furnished room houses. I would recommend that provision be made for reports from these houses similar to those made by hotels under the Liquor Law Tax to the State Excise Department. This might be effected under a licensing system at a nominal fee based upon the number of beds, and might be placed under the direction of the State Department of Health which now has some authority over such places.

Further means of identification of naturalized citizens should be provided for in the registry books so as to require either an absolute statement of the time of naturalization and of the court which performed the act, or the production of the naturalization papers themselves, so that the election authorities could verify the statements thus made. Too much latitude has been permitted in this direction in the past. During the last election it was discovered that great numbers of alleged naturalized citizens had no right to vote, either having been imposed upon, or having been parties to the attempted frauds. The naturalization laws of our State are much more effective in guarding against such abuses than are

the United States laws. One of the principal methods of securing fraudulent naturalization papers has been for the holder of legal papers to apply for duplicate papers, and then to sell such duplicate papers to persons not entitled to possess them. The law should be amended in this direction so that duplicate naturalization papers could be procured only upon an order of the court, entered after a due presentation of the facts as to the lost certificates. This whole subject of further guarding the elective franchise is commended to your consideration and I hope that such laws may be enacted as will more effectually guard the purity and integrity of the ballot.

I recommend to the consideration of the Legislature both the extension and restriction of the right to vote at special tax elections in cities of the third class, to those residents whose names shall be on the assessment roll, without limitation as to sex. If the right to vote at tax elections is to be limited to property holders, it would seem but an act of justice to extend that right to women property holders as well as to men.

CANALS

The bids on six test contracts for parts of the work on the 1000-ton barge canal seem to warrant the belief that the entire construction can be completed within the engineers' estimates of the probable total cost of the work. It is gratifying to know that this great expenditure, ordered by an overwhelming popular vote, will probably prove adequate so far as concerns that portion of the entire cost set apart in the estimates for construction, and it is to be hoped that the estimates of damages for taking of property will prove to be equally accurate.

The enlargement of the canal system of the State will be carried out to a considerable extent by the canalization of the rivers and other navigable waters of the State. It seems

important at this time to call attention to the fact that the United States Government has expended yearly in the United States for river and harbor improvements vast sums of money of which the State of New York has received but a trifling percentage as compared with the percentage which the commerce of New York bears to the total commerce of the United States. In the past twenty years the United States has expended nearly \$300,000,000 in river and harbor improvements, of which less than seven per cent. has been expended in the State of New York. It would seem proper that the senators and representatives of the State of New York in the National Congress be memorialized by the Legislature to press the claims of this State for larger appropriations for the improvement of natural waterways in connection with the canal system of the State.

The Constitution of the State (Article VII., Section 8) prohibits the sale of the Erie Canal, the Oswego Canal, the Champlain Canal, the Cayuga and Seneca Canal or the Black River Canal, and imposes upon the State the perpetual management of the same. Whenever it appears that any portion of the canal system has so far survived its usefulness as to make its maintenance by the State a burden with no corresponding benefits, the Legislature should submit to the people the proper constitutional amendment to permit the abandonment of such portion.

The Black River Canal from Boonville north is now practically an abandoned waterway, serving no useful purpose except to those employed to manage it under the constitutional mandate above referred to. I therefore recommend that so much of said canal be leased, sold or otherwise disposed of, and that the question be submitted to the people for their determination.

GOOD ROADS

Without increase in the estimated revenues of the State for the ensuing year, appropriations for good roads must be modest in amount, pending the action of the Legislature and the people upon the proposed constitutional amendment permitting the issue of bonds for the improvement of the highways. The attention of the Legislature to this amendment is commended.

The highways that are to be improved under the proposed plan should constitute a reasonably complete system of land intercommunication, otherwise we shall simply have patchwork. Provision should be made for the proper maintenance of the improved highways after their construction. They should be kept in repair at the expense of the locality, under the supervision of the State, and I recommend the adoption of legislation which will provide for that result. I also recommend that the contracts for building the roads require that the contractor shall maintain the same for at least five years after acceptance by the State Engineer. I strongly urge upon the Legislature the importance of placing the execution of this plan of improved highways under special expert supervision under the direction of the State Engineer and Surveyor and of developing the same in accordance with an approved system, to the end that the money expended may not be wasted but may result in permanent and useful improvements.

BANKS

The whole number of State Banks of deposit and discount engaged in business September 30, 1904, was 186, against 190 at the corresponding date in 1903. Their resources amounted to \$443,487,307.00, which was an increase of \$75,873,962.00 from the corresponding date in 1903. The surplus and un-

divided profits of these institutions at the same date were \$34,087,797.00, a gain during the year of \$1,366,684.00.

The savings banks of the State at the date of the last report carried 2,406,660 open accounts. Their total resources were \$1,275,189,167.00, which is a gain of \$53,764,165.00 over the previous year.

The number of trust companies reporting on July 1, 1904, was eighty. From July 1, 1903, to the ensuing January there had been a decrease of more than one hundred million dollars in the combined assets of these institutions, which had been altogether recovered on July 1, 1904, with over sixty million dollars besides, making the total resources of these companies on the last-named date \$1,208,450,930.00. Their combined surplus and undivided profits at the same date were \$144,345,580.00.

The aggregate resources of all the institutions subject to the Banking Department at the dates of the last reports by them were \$2,988,602,422.00, or \$181,233,853.00 more than at the corresponding dates in 1903.

Restrictive legislation guarding the rights of the depositor and protecting him from loss caused by unsafe banking should be enacted and enforced. The list of securities in which savings banks may invest the money of their depositors should be extended only with the greatest caution and upon the most satisfactory evidence that the added line of investments is one that is safe and conservative, not only for savings banks, but also for trust funds. Special legislation enumerating the authorized investments should be superseded by a general law, establishing proper standards of safety. Savings banks should be, if possible, limited to their original purpose of benevolent institutions organized to hold and invest the savings of small depositors, and the use of such institutions should be denied to

people of wealth who are capable of managing their own affairs and who make large deposits therein for investment purposes only.

Investment associations and concerns should be brought more strictly under State control, and such concerns whenever operating under unsafe and vicious systems should be suppressed.

Bank directors should be compelled to make periodical examinations of the books of their institutions and should be held responsible for the thoroughness and sufficiency of such examinations. Building and loan associations should without exception be prohibited from loaning their funds upon second mortgage. The Superintendent of Banks should be directed by law to examine, at least once in every six months, the books and securities of all banks and trust companies.

The attention of the business world is again attracted to the evil results of unrestricted loans by banking institutions to favored individuals so that the solvency of the banks and the safety of depositors are made to depend to a large extent upon the financial integrity of a few borrowers. Safe banking requires that liabilities to the bank be distributed in number and restricted in amount. The provisions of the National Bank Act limiting the total liabilities for money borrowed by any person to ten per cent. of the amount of the paid-in capital stock of the bank are to be commended. I recommend that, with reasonable exceptions as to the discount of strictly business or secured paper, the similar provision in the State law be amended by fixing the amount to be loaned to the individual borrower at not more than twenty per cent. of the capital stock actually paid in.

INSURANCE

The volume of business conducted by the corporations, companies and societies under the supervision of the Insurance Department has materially increased. The total amount of risks in force at the close of the last calendar year, including life, fire and marine insurance was \$37,501,282,689.00. It is obvious that the State owes a duty to its citizens who invest their money in insurance to this vast extent to exercise proper supervision and control over the companies doing business within its limits. No insurance company, association or fraternal order that fails to meet its obligations in full within a reasonable time after they accrue, should be allowed to do new business.

EXCISE

The total gross receipts under the Liquor Tax Law for the period beginning May 1, 1903, and ending April 30, 1904 — the statutory liquor tax year — amount to \$17,797,642.84. This is an increase of \$5,210,942.52 over the receipts for the previous year. The State's share of the liquor tax for the year ending April 30, 1904, amounts to \$9,200,560.59, being an increase of \$4,694,057.25 over the previous year. The localities show an increase of \$516,855.27 in the receipts for the year ending April 30, 1904, over the receipts for the previous year.

During the year ending April 30, 1904, 28,829 certificates were issued, as against 30,144 for the previous year, being a decrease of 1,315 certificates, or 4.3 per cent.

The estimated total gross receipts for the year beginning May 1, 1904, and ending April 30, 1905, are \$17,900,000.00.

The right to determine by popular vote whether trafficking in liquors shall be permitted in a locality, is now limited to the towns of the State. It is, in my judgment, worthy of the

consideration of the Legislature whether this right of local option should not be extended to cities and the divisions thereof.

EDUCATION

Unification of the educational system is established. The new organization is in good working order. The unfortunate controversies which existed under the dual system have been happily terminated.

The growth of our school system during the past ten years has been marked, as appears from the following statistics:

Ten years ago there were 11,778 school districts in this State employing 25,414 teachers and registering 1,083,228 pupils. The average daily attendance of these pupils was 668,097 and the expense of maintaining the schools was \$18,-921,246.00.

According to the last complete report there are 11,726 school districts — a decrease of 52; 34,453 teachers employed — an increase of 9,039; 1,256,874 pupils registered — an increase of 173,646; a daily average attendance of 928,335 — an increase of 240,238; a total expenditure for school purposes of \$41,-418,096.00 — an increase of \$22,496,850.00.

Ten years ago the State paid toward maintaining these schools, exclusive of aid given to high schools, \$3,712,352.00. Under the last apportionment State aid amounted to \$3,970,-555.00 — an increase of \$258,203.00. From these two groups of figures it appears that the aid given by the State to the schools has not kept pace with the growth of the schools. Ten years ago it amounted to \$3.43 per pupil; the last report shows that it amounted to \$3.16 per pupil, or a decrease of \$0.27 per pupil.

Included in the above figures for ten years ago were 285 high schools maintained at an expense of \$1,698,860.00. These

schools employed 1,158 teachers and registered 29,668 pupils. The last report shows 636 high schools — an increase of 351; 3,506 teachers — an increase of 2,348; 81,108 pupils — an increase of 51,440; amount expended, \$5,007,055.00 — an increase of \$3,308,195.00. The State aid given to high schools ten years ago amounted to \$78,897.00; the amount so apportioned in the last report is \$290,025.00 — an increase of \$211,128.00, or about 267 per cent.

Ten years ago the State rendered aid to the public high schools to the extent of \$2.66 per pupil; last year this amount was \$3.58 — an increase of \$0.92 per pupil.

Ten years ago there were 93 colleges in the State employing faculties numbering 2,212 members and instructing 21,833 students with an expenditure of \$4,792,987.00. The last report shows 119 colleges — an increase of 26; 3,871 members of the faculty — an increase of 1,659; 39,718 students — an increase of 17,885, and expenditures amounting to \$10,061,269.00 — an increase of \$5,268,282.00.

Ten years ago there were 125 private academies employing 1,031 teachers, instructing 12,131 pupils, with an expenditure of \$1,141,422.00. The last report shows 144 private academies — an increase of 19; employing 1,288 teachers — an increase of 257; instructing 13,988 pupils — an increase of 1,857; expending therefor \$2,099,945.00 — an increase of \$958,523.00. The State aid given these private academies ten years ago amounted to \$17,956.00. The amount so apportioned in the last report was \$22,332.00 — an increase of \$4,374.00.

CHILD LABOR

New York is in advance of most of the states of the Union in the matter of legislation on the subject of child labor. The law, however, is not rigidly enforced and the lack of proper

legislation in neighboring states makes it difficult to establish proper restrictions upon the work in this State. Uniformity of legislation on the subject of labor is a matter which should be strongly urged by the State of New York, in order that the condition of women and children may be ameliorated throughout the country and in order that the industries of the State may be relieved from the unfair competition of those states which place no restriction upon the subject. The place for children of school age is in the school, and they should not be withdrawn therefrom, or allowed to work in any way which interferes with their school attendance, before they reach the age at which primary education ordinarily ends.

AGRICULTURE

The liberal appropriations made for the State Department of Agriculture, the Agricultural Experiment Station at Geneva, the College of Agriculture and the Veterinary College at Cornell University, the State Fair and the county and town fairs, indicate the fostering care which the State exercises over the development of its agricultural interests.

The functions of the State in this regard should be two-fold: first, educational, whereby conditions are aimed at which will insure a uniform high standard for agricultural products in this State, whereby the ravages of disease may be prevented and checked, whereby improved methods of cultivation and production may be introduced and whereby the farm, the dairy and the orchard may be brought to their highest state of productivity; and, secondly, protective, whereby the prevention and detection of the sale of adulterated food products are sought. The value of this work depends upon the thoroughness and skill with which it is done. The work of the State Department of Agriculture is far-reaching in its character.

Its effectiveness depends largely upon the care and precision with which the statutes are drawn under which its duties are executed. I especially recommend to your consideration the report of the Commissioner of Agriculture in this regard.

PRISONS

The laws relative to penal institutions and prison administration and to the method of dealing with criminals have undergone radical changes in this State in recent years. Penologists still maintain that our prison laws are largely anomalous and antiquated, and they urge the adoption of a system of State control for all State offenders, the extension of the parole system, the enlargement of the reformatory idea, and other changes looking toward a more consistent and scientific treatment of the subject. I recommend to the Legislature the consideration of this problem and the wisdom of adopting more modern methods when the finances of the State will permit. I also recommend that some provision be made for the transfer from penal institutions of imbeciles and idiots committed thereto, to other State institutions where they may receive proper treatment.

STATE ARCHITECT

The State Architect reports that he has had for some time past an average of 150 contracts, large and small, in force at one time and scattered all over the State. For the past year or two appropriations have been given his office covering the services of but four regular inspectors. It is obvious that these four men can by no means cover the ground. The interests of the State should not be permitted to suffer by reason of insufficient inspection and in my judgment such interests can be so far promoted by thorough and careful

inspection as to save to the State more than the amount of the salaries paid for proper supervision of the work done under building contracts.

The law should give the State Architect ample time to prepare plans and specifications for public buildings. He should not be expected to have completed plans for any important work prepared in less than six months after the appropriation therefor is made.

PUBLIC BUILDINGS

The Superintendent of Public Buildings again calls attention to the inadequate office space contained in the State buildings and to the fact that the State is hiring offices for certain departments for which there is no room in the State buildings. The suggestion is made for the removal of the Department of Education, including the State Library, from the Capitol to a separate building to be constructed for its accommodation. The Superintendent also again calls attention to the unsatisfactory condition of the plumbing, heating, lighting and drainage of the Capitol, and I recommend that careful attention be given to his report on this subject.

CIVIL SERVICE

The Constitution of the State provides (Article V., Section 9) that "Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive."

The Civil Service Law provides specifically for the classification of the civil service of the State and the civil service of the various cities of the State, but provides only in general terms that the State Civil Service Commission may from time

to time extend the classification to the other civil divisions of the State whenever practicable. This discretionary power has been exercised in but one instance, when, in June, 1900, the classification was extended to the county service of New York, Kings, Queens, Richmond and Erie counties.

The counties of Albany, Monroe, Onondaga and Rensselaer contain cities of the second class and have a population of upwards of 150,000 each, with the exception of Rensselaer, which has a population of 121,697. The following counties also have a population of upwards of 100,000 each: Westchester, 183,375; Oneida, 132,800; Orange, 103,859. In these counties are institutions for the care and confinement of the delinquent and dependent classes and public offices where the rule of the Constitution can well be applied.

In the smaller counties of the State where the employees are few in number and where the fee system prevails, there is difficulty in applying the merit system effectively, but in these larger counties there seems no reason why the merit system should not profitably be extended to comply with the mandate of the Constitution.

The Society for the Reformation of Juvenile Delinquents in the City of New York maintains a house of refuge for juvenile delinquents on Randall's Island. While it is a private corporation, the managers being elected by the members of the society, yet children are committed to such house of refuge by the courts and the State appropriates annually a large sum for the maintenance of such juvenile delinquents.

The officers and attendants of the Randall's Island institution are paid by the corporation out of funds received from the State. Such employees are about 114 in number and their payrolls for the fiscal year ending September 30, 1904, amounted to \$73,184.13. The society is essentially a state

agency and the civil service provisions of the Constitution should be applied to the appointment and promotion of such employees, as a condition precedent to the further receipt of state aid.

PUBLIC HEALTH

The best methods of preventive medicine and public hygiene should be adopted by the State and the civil divisions thereof. Germ diseases may be classed as preventable diseases, particularly those that are caused by the contamination of the water supply. All sources of public water supply should be examined and analyzed by the State Commissioner of Health as rapidly as possible and at frequent intervals. The private water supply of public resorts should also be subjected to state analysis and the results should be made public. I recommend that the Legislature devise a system of state inspection of domestic water supplies, to be maintained at the cost of the municipalities, corporation and private owners affected thereby.

The growing demands for additional water supplies in the greater cities and for adequate supplies of pure and wholesome water for domestic purposes in other municipalities indicate that in the not distant future the problem of water supply for municipalities will be a most serious one. It seems doubtful whether all centres of population can continue indefinitely to rely upon a natural supply of pure and wholesome water without recourse to artificial methods of purification. The question presents itself whether it is not feasible to develop some plan whereby the municipalities may be insured a water supply at a minimum cost under state supervision through state conservation of the waters of the Adirondacks and other sources. The Legislature of 1904 enacted a law creating a water storage commission which has for its object practically the con-

servation of water for power purposes. A State commission, having also for its object the supply of water to the cities might be of great service.

FISH, GAME AND FORESTS

The forests and streams of the State should be made attractive places of resort for the invalid and for those in search of wholesome recreation in the open air. To this end the fish, game and forest laws should be strict and consistent. The preservation of the wilderness and the restocking of the waters of the State with food fish, and the protection of game, should, in my judgment, be encouraged, not only for the benefit of our own people, but for the purpose of attracting to our State the ever-growing army of sportsmen and pleasure-seekers.

The policy of the State towards the extension, preservation and control of the Forest Preserve demands careful attention, and I shall at some later date communicate to you by special message my recommendations on that subject, whereby I hope to be able to outline a more comprehensive and consistent treatment than would be proper within the limits of this message.

UNITED STATES DEPOSIT FUND

The Comptroller in his report of 1903 states that, "This
" trust fund under the State Finance Law is included with the
" common school and literature funds as a part of the educa-
" tion fund, by Article IV. of that statute, but is managed pur-
" suant to provisions applied to no other fund or class of
" investments for public moneys, with results and tendencies
" so unsatisfactory that a change of method seems imperative
" for the preservation of the fund and for the advantage of

"the citizens entitled to the benefits contemplated by the
"original acts under which the money was accepted by the
"State."

The United States Deposit Fund is distributed in the care of 122 loan commissioners, two in each county. It is loaned on real estate mortgages on improved lands worth double the amount applied for, exclusive of buildings. With the lapse of sixty years the benefits to be derived from distributing loans of small amounts in remote districts have become legendary and the method proves to be antiquated, expensive and inefficient for the purpose. During the past fiscal year the fund suffered a diminution from losses on foreclosure of mortgages, and other causes, of \$169,312.73. The law requires that transfers be made from the general fund to maintain the principal of this fund intact. The annual net income from the fund for the year ending September 30, 1900, is stated by the Comptroller to be less than .2 of one per cent. The average net rate of interest on loan commissioners' mortgages since the year 1895 is 2.2 per cent. During the same period the net rate of interest received on municipal bonds held by the Comptroller is 3.75 per cent. At the close of the year 1902 the State owned approximately 18,000 acres of land acquired through foreclosure of loan mortgages, upon which the rents collected for that year were less than one per cent. of the cost of the land to the State. The acreage from this source is constantly increasing, much of it unsalable or only to be disposed of at heavy loss. The tendency appears to be that this trust fund will become an annual charge upon the taxpayers, instead of an aid, unless some remedy is provided. I therefore recommend that the present system of investments be changed and that the fund be held and managed under the supervision of the Comptroller's office in some such man-

ner as the common school fund and literature fund now are held and managed.

TENEMENT HOUSE LAW

The Court of Appeals has finally upheld the constitutionality of the only part of the Tenement House Law of 1901 which has been contested in the courts. This measure is one not only of charity, but also of justice; not only for the benefit of the poorest families, but also for the general welfare of the community. For its enactment and enforcement my predecessor is entitled to the highest credit. The law is now definitely established. Large sums of money have been expended under it, and it would seem to be of the utmost importance that no change should be made in it except where the necessity therefore is apparent.

PRESERVATION OF PLACES OF SCENIC AND HISTORIC INTEREST

The preservation of historic objects or picturesque places in the State should be encouraged. The beautiful and wonderful features of natural landscape should be protected from disfigurement, and places and objects identified with the history of the State should be saved from obliteration. It does not seem necessary that the State should expend large sums of money for this purpose, but it should aid by legislation, wherever possible, the protection of natural scenery and encourage the work of those associations which are organized for the purpose of commemorating historic events and marking points of historic interest. Legislation which seeks to promote the improvement of cities and villages by the adornment of their parks and thoroughfares, and which compels the removal of the unsightly and disfiguring from public places, should be enacted.

LOUISIANA PURCHASE EXPOSITION AT ST. LOUIS

New York State participated with success in the great exposition which has just closed at St. Louis. The exhibits of the State received suitable recognition in the awards made by the exposition authorities. The grand total of awards to this State was 559. The supremacy of the State in many of the departments in which exhibits were made was demonstrated. The work of the commissioners was performed with zeal and discrimination and reflects credit upon the State.

I desire to renew the recommendation of my predecessors, that laws, so far as possible, be general in their application and that the unnecessary multiplication of statutes be avoided. The Constitution of the State in terms prohibits many classes of special acts and the spirit of the Constitution and of our institutions demands the application of the principle of equal rights to all and special privileges to none.

I commend to your thorough study the reports of the various departments which are about to be submitted to you. They contain much that is of high value and great interest to the student of governmental affairs. It is impossible in the limits of this message to extract therefrom more than the broadest generalizations. The work of the departments is in a satisfactory condition and the reports of the heads thereof are thorough and exhaustive.

FRANK W. HIGGINS

**TEMPORARY DESIGNATION OF JUSTICE
NATHAN L. MILLER TO THE APPELLATE
DIVISION, SECOND DEPARTMENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

In accordance with section 2 of article VI of the Constitution and the statute in such case made and provided the

HON. NATHAN L. MILLER

of the city of Cortland and county of Cortland who is a Justice of the Supreme Court for the Sixth Judicial District is hereby temporarily designated as an Associate Justice of the Appellate Division of the Supreme Court for the Second Judicial Department, it appearing to my satisfaction upon the certification of the Honorable Michael H. Hirschberg the Presiding Justice thereof that an additional Associate Justice is necessary for the speedy disposition of the business of the court.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fifth day of
[L S] January in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**REDESIGNATION OF JUSTICE WILLIAMS TO
THE APPELLATE DIVISION, FOURTH DE-
PARTMENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

In accordance with section 2 of article VI of the Constitu-
tion and the statute in such case made and provided the

HON. PARDON C. WILLIAMS

of the county of Jefferson, who is a Justice of the Supreme
Court of the Fifth Judicial District is hereby redesignated as
an Associate Justice of the Appellate Division of the Supreme
Court in and for the Fourth Judicial Department for the term
of five years from and after the 15th day of January 1905, his
prior designation as such Associate Justice being about to
expire.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this sixth day
[L S] of January in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS.

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**DESIGNATION OF JOHN F. O'BRIEN AS MEMBER
OF A BOARD TO ACQUIRE LANDS FOR THE
STATE**

STATE OF NEW YORK

EXECUTIVE CHAMBER

It appearing to my satisfaction that the public interest requires it

Therefore in accordance with section three of chapter ninety-four of the laws of 1901

JOHN F. O'BRIEN

of West Chazy, a Commissioner of the Land Office, is hereby designated to act with the Forest, Fish and Game Commissioner in acquiring lands for the State.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twenty-

[L s] seventh day of January in the year of our Lord
one thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor :

FRANK E. PERLEY

Secretary to the Governor

**DESIGNATION OF JOHN G. WALLENMEIER, JR.,
AS MEMBER OF A BOARD TO ACQUIRE
LANDS FOR THE STATE**

STATE OF NEW YORK

EXECUTIVE CHAMBER

It appearing to my satisfaction that the public interest requires it

Therefore in accordance with section three of chapter ninety-four of the laws of 1901

JOHN G. WALLENMEIER, JR.

of Tonawanda, a Commissioner of the Land Office, is hereby designated to act with the Forest, Fish and Game Commissioner in acquiring lands for the State.

GIVEN under my hand and the Privy Seal of the State
at the capitol in the city of Albany this twenty-
[L s] seventh day of January in the year of our Lord
one thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

CERTIFICATE OF SENATOR DEPEW

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that on the 18th day of January, 1905,
Chauncey Mitchell Depew was duly chosen by the Legislature

of the State of New York, a Senator from said State, to represent said State, in the Senate of the United States, for the term of six years, beginning on the 4th day of March, 1905.

GIVEN under my hand and the Great Seal of the State
at the Capitol in the city of Albany this seventh
[L. S.] day of February, nineteen hundred and five.

FRANK W. HIGGINS

Governor

Attest:

JOHN F. O'BRIEN

Secretary of State

MESSAGE TO THE LEGISLATURE RECOMMENDING A STATE WATER SUPPLY COMMISSION

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, February 20, 1905

TO THE LEGISLATURE:

The problem of providing an additional water supply for the city of New York that shall be abundant in quantity and satisfactory in quality is one which demands present and earnest attention. The City's needs are urgent and legislation is sought for its relief.

The charter of New York City (Sec. 472) provides that "The commissioner of water supply, gas and electricity, with the approval of the board of estimate and apportionment, shall have power *within and throughout the state of New York*, to select and to determine all sources of water supply that may be needed for the supply of the public water-works of said city, and for the supply and distribution of water in said city. Any sources of water so selected and determined by him

shall be deemed necessary for the public use of the City of New York, and thereupon, with the approval of the board of estimate and apportionment, together with the authority of the board of aldermen expressed by its resolution or ordinance, it shall be lawful for the City of New York to acquire by condemnation any real estate or any interest therein that may be necessary in order to acquire the sole and exclusive property in such source or sources of water supply, and to wholly extinguish the water rights of any other person or corporation therein, with the right to lay, relay, repair and maintain aqueducts, conduits and water pipes, with the connections and fixtures on the lands of others, and, if necessary, to acquire by condemnation, lands for such purpose in any county or counties through which it may be necessary to pass in conducting such waters to the City of New York; the right to intersect and to direct the flow of water from the lands of riparian owners, and from persons owning or interested in any water, and the right to prevent the flow or drainage of noxious or impure matters from the lands of others into its reservoirs or sources of supply, provided that it shall not have power to acquire or to extinguish the property rights of any person or corporation in or to any water rights that at the time of the initiation of proceedings for condemnation are in actual use for the supply of the water-works of the people of any other city, town or village of the state, or for the supply and distribution of waters to the people thereof; or which in the opinion of the court on such proceedings may reasonably become necessary for such supply or to take or use the water from any of the canals of the state, any canal reservoirs, or waters used exclusively as feeders for canals, or from any of the streams acquired by the state for supplying the canals with water. * * * The City of New York is authorized to acquire

by purchase, lease, or otherwise, lands or water in any other state, or rights, interests, or privileges in, to or over any lands or water in any other state for the purpose of supplying water to the City of New York."

This sweeping provision has proved inadequate. Change of administration is followed by re-investigation and modification or condemnation of previous plans. Continuity of action can scarcely be expected when the policy of the department may be altered every two years. Each new commissioner lacks the time, if not the ability, to work out the problem himself. The extension of the present system of supply cannot much longer be carried on by piecemeal—a method which involves the maximum of expenditure and the minimum of result. A continuous body composed of able and interested men, selected without reference to political affiliations can alone, in my judgment, deal adequately with the water question. The power of appointment of such a commission or board should be lodged in the hands of the Mayor, as is demanded by the spirit if not by the letter of the constitutional provision guaranteeing to cities the right to select their own local officers. But to emphasize the proposition that the problem is strictly one of business and not of politics, to encourage the careful and judicious consideration of the proper qualifications for the position by capable counsellors, and to create the utmost confidence on the part of the citizens in the independence and ability of the new commission, it would seem expedient to permit such organizations as the Chamber of Commerce, the Manufacturers' Association and the American Society of Civil Engineers to nominate to the Mayor a list of candidates from which he shall select his appointees.

Such legislation is urged by the city authorities, and I recommend to you its prompt consideration.

But while the legislature is considering the needs of the City of New York it should also consider its duty to the state and to other civil divisions of the state. Under the existing law (City Charter Sec. 472 above quoted), the commissioner of water supply is authorized to select and condemn sources of water supply throughout the state, subject only to the restriction that he shall not take from another municipality its water supply in actual use or waters which may reasonably become necessary for such supply, or interfere with the canals of the state.

The commissioner of water supply may therefore take water rights anywhere in the state, subject only to the approval of the board of estimate and apportionment and the board of aldermen, and the restrictions above referred to. Other municipalities are not in a position before the court to protect their prospective needs. In condemnation proceedings under this section of the city charter, compensation is paid only for the value of property actually taken. Collateral and consequential damages are not considered. With the taking and destruction of the factory on the water shed the store may lose its customers, the church its worshippers, and the village its population. Values may thus be depreciated without compensation where there is no actual taking of property by the City. Local opposition to the extension of the City's water system into a community is therefore natural and not unjustifiable, and has resulted in special legislation excluding the City of New York from various convenient sources of supply which might be used under proper restrictions.

An abundant supply of water for domestic purposes exists if it is properly conserved and distributed. Millions of gallons run daily to waste. It seems entirely feasible to utilize the sources of supply with economy and with justice to all in-

terests. But in my judgment this requires state supervision. A State commission, which shall examine and pass upon all plans for new sources of water supply or extensions or additions to existing supplies, and which shall be vested with power to approve or disapprove such plans seems to be needed to protect the general welfare. The members of such commission should have proper scientific and legal qualifications and a reasonably long and secure tenure of office. Its determinations should be subject to speedy judicial review by the Appellate Division of the Supreme Court at the instance of parties aggrieved.

Without indicating further the details of such bills as may be necessary to accomplish the two-fold result of providing the City of New York with water and protecting other localities of the State from injury, I earnestly recommend early action on the part of the legislature dealing comprehensively with the whole subject.

FRANK W. HIGGINS

**VETO OF ASSEMBLY BILL No. 183, REGARDING
THE PALMYRA CLASSICAL UNION SCHOOL**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, February 22, 1905

TO THE ASSEMBLY:

I herewith return without approval Assembly bill, Introductory number 182, Printed number 183, entitled:

“An Act to authorize the erection of an addition to present school building by the Palmyra classical union school in school

district number one, in the town of Palmyra, and to provide for the payment therefor."

My objections thereto are that it is unnecessary special legislation. The bill authorizes the board of education of the Palmyra union school to erect an addition to the present school building at a cost of \$12,000, to issue bonds to pay for the same, and to levy a tax to pay the principal and interest of said bonds. Section 42 of title 8 of the Consolidated School Law, read in connection with sections 9 and 10 of such title, seems to give the board of education of the Palmyra union school ample power to levy taxes and issue bonds for school purposes when authorized by a majority of the voters of the district.

But it is said that there is a doubt as to the application of these sections of the general school law to Palmyra, by reason of the fact that the Palmyra classical union is incorporated under a special act (Ch. 296, laws of 1857), which limits the amount to be raised by taxation in any one year. Assuming that such limitation applies, the legislature should not be called upon to pass a special act whenever a school district desires to build or enlarge a school house. If existing legislation is inadequate to accomplish the purpose, the proper remedy is an amendment of the law, extending the powers of the voters of the school district to determine for themselves from time to time the amount of money they shall raise for school purposes. If the legislature is called upon to act whenever a school district desires to spend ten thousand dollars for school buildings, the fundamental principles of local self-government are violated and the time of the legislature unnecessarily occupied by matters of no general concern.

I have requested the recall of several bills sent to me this session, where the purpose of the proposed act could, in my

judgment, be accomplished under existing general laws, or where, in my judgment, general laws should be passed to cover the case.

I return this bill without approval in order to bring to the attention of the legislature the policy adopted by the Executive.

FRANK W. HIGGINS.

**REDESIGNATION OF JUSTICE HATCH TO THE
APPELLATE DIVISION, FIRST DEPARTMENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

In accordance with section two of article six of the Constitution and the statute in such case made and provided, the

HONORABLE EDWARD W. HATCH

of the city of Buffalo, who is a Justice of the Supreme Court of the Eighth Judicial District is hereby redesignated as an Associate Justice of the Appellate Division of the Supreme Court in and for the First Judicial Department for the term beginning with the sixteenth day of April, 1905, and terminating with the expiration of his present term of office on December 31, 1909, his prior designation as such Associate Justice being about to expire.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this first day
[L. s.] of March in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS.

By the Governor :

FRANK E. PERLEY

Secretary to the Governor

**REDESIGNATION OF JUSTICE JENKS TO THE
APPELLATE DIVISION, SECOND DEPART-
MENT.**

STATE OF NEW YORK

EXECUTIVE CHAMBER

In accordance with section two of article six of the Constitution and the statute in such case made and provided, the

HONORABLE ALMET F. JENKS

of the county of Kings, who is a Justice of the Supreme Court of the Second Judicial District is hereby redesignated as an Associate Justice of the Appellate Division of the Supreme Court in and for the Second Judicial Department, for the term of five years, beginning on the fourth day of April, 1905, his prior designation as such Associate Justice being about to expire.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this first day
[L. S.] of March in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MATTER OF THE EXTRADITION OF GEORGE W.
HARRIS AND BENJAMIN J. DREYER — DECISION BY THE GOVERNOR**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, March 9, 1905

In the matter of the Extradition of George W. Harris and Benjamin J. Dreyer.	}
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DECISION BY THE GOVERNOR:

The only question in this case is whether it sufficiently appears from the papers accompanying the requisition and the proofs taken upon the hearing before me that the persons whose surrender is demanded are fugitives from the State of New Jersey and ought to be surrendered as such.

The requisition is based upon five indictments found by the grand jury of Hudson County, New Jersey.

The first of these charges the persons named with the crime of obtaining money by false pretenses committed in the county of Hudson on divers days and dates between the first day of February and the first day of July, 1904.

The second charges that on January 31, 1904, in said county they unlawfully converted to their own use two hundred shares of stock of the Rock Island Railroad Company, the property of the complainant.

The third and fourth are like the second, charging the same or what appears to be the same crime, except that the

third charges it to have been committed on the twelfth day of May, 1904, and the fourth that it was committed on divers days and dates as in the first indictment.

The fifth charges that on the twenty-fifth day of November, 1903, at Hoboken, in said county, they and Henry C. Robinson conspired and agreed together to cheat the complainant and to embezzle the property entrusted to their care by him, and that in execution of said agreement they did on said November 25th and on other days particularly specified, dispose of said property and convert the proceeds to their own use.

The evidence to show that they were in the State of New Jersey at the time when the several crimes are alleged to have been committed is in the form of affidavits made by the complainant and others. They consist of but little more than mere statements that on certain days named therein they were there. That made by the complainant avers that and nothing further. He does not say that he saw them, or had any communication or transaction of any kind with them or either of them, and does not mention a single circumstance connected with their being there; he merely says they were there.

The other affidavits go but little further. In some of them it is alleged that the person making the affidavit saw and talked with them or with one of them in Hudson County on certain days named, and in some instances the days so named are among those alleged in the indictments, but there is not the slightest intimation in either of the affidavits that at any time anything was said or done that could have constituted a crime or any part of one, or have been in any way connected with the criminal offenses charged in those indictments.

In answer to this evidence the demanded persons were sworn and both of them testified in substance that they never

at any time saw the complainant or had any transaction of any kind with him in the State of New Jersey, and that they never saw him at all until they saw him in the city of New York after their failure in September last. One of them, Mr. Dreyer, testified that he was never in his life time in the city of Hoboken, the place named in the conspiracy indictment, and that although he did on several occasions pass through Hudson county on a railroad train, he never stopped there.

This testimony stands wholly undisputed.

Now, it cannot be said that there is no proof at all that the demanded persons are fugitives from justice, but it certainly is true that such proof as there is, is exceedingly meager and unsatisfactory. As to some of the indictments there is none at all. There is no evidence whatever that either of the demanded persons was in the State of New Jersey at the time alleged in the first indictment. The affidavits are that they were in that State on certain days named, but it is not alleged and there is no evidence to show that the crime charged in the first indictment was or is supposed to have been committed on either of those days.

The same is true with regard to the fourth indictment.

In the second indictment it is charged that the crime was committed on the thirty-first day of January, 1904, but there is no evidence that either of the demanded persons was in New Jersey on that day.

In the third indictment the twelfth day of May is the date given. There is no satisfactory proof that Harris was in New Jersey on that day; but it is not denied that Dreyer was there. He himself testified that on that day he went to Paterson and returned to New York, but that he did not stop in Hudson county, and in substance that nothing took place that could form the basis of the accusation made against him. I have

no doubt that he testified to the strict truth. There is nothing to contradict him, and that the fact is not as he testified has not been claimed. But I understand the contention of the counsel for the demanding state to be that, although the facts are as testified by Dreyer, still as the indictment charges him with a crime committed on a day when he was in that state, it is my duty to surrender him as a fugitive from justice. Under the circumstances of this case, I think not.

There seems to be much confusion and uncertainty as to the date of the crime alleged in the third indictment. As already pointed out, the same crime, or what I take to be the same, is also charged in two other indictments which differ from the third only by giving a different date; hence, it is impossible to settle upon either date as the correct one. There is certainly nothing to show that the correct date is that stated in the third indictment, and the evidence given by Mr. Dreyer, so far as it has any bearing upon the question, goes to show that it is not. Consequently the facts necessary to constitute him a fugitive are, in my judgment, not proved.

It may be that I am in error in assuming that the three indictments relate to the same transaction; but in the absence of all proof I must either assume what seems most reasonable, or else blindly ignore plain and pertinent facts, which I certainly ought not to do; and it is clearly more reasonable to suppose that these three indictments relate to the same transaction than it would be to suppose that there were three different transactions all exactly alike.

As to the fifth, or conspiracy indictment, there is no proof that either of the demanded persons was in New Jersey on the twenty-fifth day of November, 1903. There is some that they were there on other days named in the indictment, but it is of an exceedingly indefinite and uncertain character, as

I have already pointed out. So far as Mr. Dreyer is concerned, very much of it was denied by him at the hearing; and as to Mr. Harris, I think that exclusive of the complainant's affidavit, there is no proof whatever that he was there on either of the days named, except that in one affidavit it is said that he was there on or about February 8th.

Upon a careful consideration of the whole case, I cannot escape the conclusion that I should be remiss in the duty which I owe to the demanded persons as citizens of this state, if I were to comply with the requisition made for their surrender. It is well settled that in all cases it ought to be shown by positive proof that the accused is in fact a fugitive from justice of the demanding state. The nature and extent of the proof required will of course vary with the varying circumstances of the different cases. Where there is no controversy as a general rule, it need be but little if any more than a formal affidavit. But where there is controversy, the proof ought to be clear, definite and certain; and it is very far from being that in this case.

My conclusion is that the warrant issued when the requisition was presented should be revoked.

FRANK W. HIGGINS

MESSAGE TO THE LEGISLATURE CONCERNING THE STATE'S FOREST PRESERVE

March 9, 1905

TO THE LEGISLATURE:

The State now owns nearly 1,500,000 acres of forest land in the Forest Preserve, title to about 775,000 acres of which was acquired through tax sales, and the remainder at a cost of

nearly \$2,800,000, directly appropriated for the purchase thereof. The Constitutional Convention of 1894 proposed to the people of the State a new rule to regulate the Forest Preserve of the State, which was adopted by the People and provides that:

“(Art. VII., Section 7.) The lands of the State now owned or hereafter acquired, constituting the Forest Preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.”

This policy is at variance with the previous policy of the State, which was that forest conservation and utilization of the timber crop should go hand in hand. It absolutely prohibits on state lands the practice of scientific forestry, which in other countries not only improves the forest but also increases its yield of timber, and makes it a source of revenue to the State. It is safe to say that nearly every experienced forester was opposed to the ironclad provision that the forest preserve should be forever kept as “wild forest lands.”

The full meaning of the restriction against removing timber from the forest preserve contained in the organic law is emphasized by the opinion of Attorney-General Hancock, who said that the prohibition included “every kind of timber, whether standing, felled by the axe, or thrown down by the forces of nature” (Report Attorney-General for 1895, p. 89), and also by the opinion of Attorney-General Cunneen, who said that the State had no power to permit the sale and removal of burnt timber on state lands which have been devastated by

forest fires, and that "the expression 'wild forest lands' in the Constitution indicated that it was intended to preserve these lands as a wilderness, in which the work of man should not appear." Nothing is to be taken away, and no trees are to be planted.

The idea uppermost in the minds of the advocates of the constitutional provision above quoted was the protection of the sources of water supply, and the necessity of retaining the rainfall on the surface of the ground.

Many consider the Forest Preserve as a great wilderness park or pleasure ground to be maintained for the benefit of those in search of health or recreation in the primeval forest.

The economic use of the forest as a source of revenue through proper methods of cutting and reproduction, which should in no wise impair its other functions, has been sacrificed to its use for water protection and pleasure.

The policy adopted by the United States government for the care of the Federal Forest reserves is diametrically opposite to that of the State of New York, and has recently been stated as follows:

"Federal Forest reserves are now fixed facts. It is a serious thing to withdraw from settlement, as the government has done, some 63,000,000 acres of land. But when the character of this land is understood, and the purposes the reservations will accomplish are known, it will be generally recognized that the area permanently reserved will serve the public best under forest cover. Its topography and soil unfit it for agriculture, but it is admirably suited to tree growth. Wisely administered, it will continuously furnish an immense timber output, while its

influence in conserving the water supply for vast dependent agricultural areas will prove of inestimable value. The reserve laws provide for the sale of timber in small or large quantities to persons both in and outside the reserve. Thus, the forests can be made self-supporting, and through funds created in this way they can be protected from fire and be made more productive and useful. But in making these sales the future of the forest is more considered than the money return from the timber cut. Hence, the sales are strictly guarded by bonded contracts between the individuals and the government. The contracts specify the amount of timber bought and the price to be paid, limit the area and time of cutting, prescribe simple and practical regulations to guard against fire, and cover all essential relations between the contracting parties pending the completion of the contract. No trees can be cut except those previously marked by a government official. Under such contracts millions of board feet of lumber are annually being cut from the reserves, to the improvement of their condition.

It is not the government's purpose to maintain the reserve forests untouched, but to use and develop them. Proper lumbering is as necessary to a productive forest as protection. Mature or ripe trees should be cut not only for the same reason that wheat or corn is, to save and utilize the product, but also to promote reproduction. Agricultural crops require sowing or planting each year, but forests, properly thinned by cutting, reproduce themselves and furnish a continuous crop. That this work may be effec-

tively accomplished there must be protection from fires and proper conditions for tree growth must be maintained. Important among these conditions is the demand of trees for room and sunlight. The young growth must be neither crowded nor shaded out. Thus, for the best results in reproduction the mature trees should be cut, and the dead and diseased timber should be disposed of as rapidly as possible."

It is proposed to amend the Constitution by adding to section 7 of article VII. a proviso that "the legislature may authorize the removal of dead timber on burned areas so far as necessary for reforestation, through officers and employees of the State, but not by contract."

The resolution proposing this amendment was adopted by the legislature in 1904 and referred to the present legislature for its action.

Undoubtedly, burnt timber, if removed at all, should be removed immediately after a fire, before it becomes worthless by decay, except for the purposes of water protection. Experience has taught, however, that if a preference is given to the removal of burnt or down timber, live timber may speedily become burnt or down timber. If by carelessness or design forest fires occur, whereby not only the soft wood trees (which constitute about 30 per cent. of the forest) but also the remaining hard woods are destroyed, more serious injury is done than would result from any proper method of removing the full grown trees. Under the present Constitution, the unlawful removal of burnt timber has recently given rise to numerous actions for trespass, which have been settled by the payment of considerable sums of money. Such trespasses should not be permitted. The State should either pre-

serve the present imperative rule against the removal of timber, and enforce it rigidly by preventing trespasses, or else adopt a more liberal policy of scientific forestation, which will permit the removal, under proper State supervision, of trees that have attained their growth, as well as burnt and down timber. Lawlessness and encouragement to lawlessness should be suppressed, and all the penalties of the law should be imposed to the utmost upon the timber thief.

It is further proposed to amend the forestry section of the Constitution by permitting the sale of lands outside the limits of the Adirondack Park and the Catskill Park, and the purchase of other lands with the proceeds of such sales. By this process about 75,000 acres of little value as forest lands could be excluded from the preserve, and the proceeds used to purchase valuable forests now within the limits of the preserve.

I hereby recommend:

1. That the proposed constitutional amendment permitting the removal of burnt timber be not submitted to the people.
2. That the forest laws be so amended as to ensure the prevention of trespasses, to compel the prosecution of malicious trespassers, both civilly and criminally, to the full extent of the law, and the seizure by the State of all timber cut or removed by trespassers from State lands, and to prevent the condonation of trespasses.
3. That provision be made for the submission to the people of a constitutional amendment permitting a more scientific delimitation of the forest preserve, so as to permit the sale of lands other than wild forest lands now included in the preserve, and the purchase with the proceeds thereof of other forest lands.

FRANK W. HIGGINS

**MATTER OF CHARGES AGAINST FRANK F. HUF-
NAIL, COUNTY CLERK OF MONTGOMERY
COUNTY—NOTICE AND SUMMONS**

STATE OF NEW YORK

EXECUTIVE CHAMBER

*In the matter of the charges preferred against Frank F. Huf-
nail as county clerk of the county of Montgomery—
Notice and summons.*

*To FRANK F. HUFNAIL, County Clerk of the County of Mont-
gomery.*

You are hereby notified that charges of malfeasance in office and of violation of your oath of office and of neglect of duty, and of improper conduct, have been preferred against you in your capacity as county clerk of the county of Montgomery, by the Amsterdam Bar Association, and a copy of said charges is herewith served upon you.

You are hereby further notified to file your answer with me on or before the fifteenth day of March, 1905, and to appear before me at the Executive Chamber in the city of Albany on the twentieth day of March, 1905, at ten o'clock in the forenoon of that day, when you will be afforded an opportunity to be heard in your defense in answer to such charges.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this ninth day
[L. s.] of March in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

Governor

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MATTER OF CHARGES AGAINST WILLIAM O.
DODDS, SHERIFF OF MONTGOMERY COUNTY
— NOTICE AND SUMMONS**

STATE OF NEW YORK

EXECUTIVE CHAMBER

*In the matter of the charges preferred against William O.
Dodds as sheriff of the county of Montgomery—
Notice and summons.*

To WILLIAM O. DODDS, sheriff of the county of Montgomery:

You are hereby notified that charges of malfeasance in office and of violation of your oath of office, and of neglect of duty, and of improper conduct, have been preferred against you in your capacity as sheriff of the county of Montgomery by the Amsterdam Bar Association, and a copy of said charges is herewith served upon you.

You are hereby further notified to file your answer with me on or before the twentieth day of March, 1905, and to appear before me at the Executive Chamber in the city of Albany on the twentieth day of March, 1905, at ten o'clock in the forenoon of that day, when you will be afforded an opportunity to be heard in your defense in answer to such charges.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this thirteenth
[L. S.] day of March in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

Governor

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**IN THE MATTER OF CHARGES PREFERRED
AGAINST FRANK F. HUFNAIL, COUNTY
CLERK OF MONTGOMERY COUNTY — COM-
MISSIONER TO TAKE TESTIMONY**

STATE OF NEW YORK

EXECUTIVE CHAMBER

In the matter of the charges preferred against Frank F. Hufnail the county clerk of the county of Montgomery.

Charges having been preferred against Frank F. Hufnail, the county clerk of the county of Montgomery, by the Amsterdam Bar Association of the city of Amsterdam, in the said county of Montgomery, and a copy thereof having been served upon the said county clerk with notice to show cause why he should not be removed from such office, and the said Frank F. Hufnail having filed his answer, making general denial to the charges preferred therein:

I do hereby appoint the Hon. Clarence A. Farnum of Wellsville, in the county of Allegany, the commissioner to take testimony and the examination of witnesses as to the truth of said charges and to report the same to me and also the material facts which he may deem to be established by the evidence; and

It is hereby ordered that the attorney-general of the State of New York conduct the inquiry and examination in the prosecution of the said charges; and

It is hereby further ordered that the said examination before such commissioner proceed with all convenient speed.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twentieth
[L. s.] day of March in the year of our Lord nineteen
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

Original filed in office of Secretary of State, March 20, 1905.

**VETO OF ASSEMBLY BILL No. 236, RELATIVE TO
THE CASES IN WHICH AN ACTION FOR
DIVORCE MAY BE MAINTAINED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, March 20, 1905

TO THE ASSEMBLY:

I herewith return without approval, Assembly Bill No. 236,
entitled:

“An Act to amend the code of civil procedure, relative to
the cases in which an action in divorce may be maintained.”

My objections thereto are as follows:

Under the existing law (Code of Civil Procedure, Sec. 1756), an action for divorce for adultery may be maintained in the State of New York as follows:

1. Where both parties were residents of the State, when the offence was committed.
2. Where the parties were married within this State.

3. Where the plaintiff was a resident of the State, when the offence was committed, and is a resident thereof, when the action is commenced.

4. Where the offence was committed within the State, and the injured party, when the action is commenced, is a resident of the State.

The proposed amendment adds to section 1756 of the Code of Civil Procedure an additional ground of jurisdiction, to wit:

“5. Where the offence was committed within the State, and the defendant is a resident thereof when the action is commenced.”

This would involve a radical change in the policy of the State governing actions for a divorce. The law as it now stands has, in substance, been in force ever since the adoption of the Revised Statutes, and it would seem that the amendment ought not to prevail unless some controlling reason therefor exists.

It is not clear to my mind that any good purpose would be served by the amendment. Its unquestioned effect would be to open the doors of our courts to non-residents of this State seeking divorces from our residents, and thereby to increase greatly the number of divorce decrees, already too numerous, and to break down the standard maintained by this State in regard to actions brought to dissolve the marriage tie. It would, in my judgment, be a step backward for the State of New York to leave the high ground it has hitherto occupied in this important matter of domestic morals.

Doubtless, by reason of legal technicalities, there are isolated cases where an innocent party suffers hardship by reason of our existing laws as to jurisdiction, and doubtless a lawyer may argue that the amendment is consistent and proper. In-

deed, of all the judges whose opinion I have been able to obtain on this point, but one advised me that, in his judgment, it would be against sound legal policy for me to approve this amendment.

I have, however, come to the conclusion that the plea of legal consistency is of little weight when compared with the duty of maintaining unshaken the present conservative position of the State on the divorce question.

FRANK W. HIGGINS

**MATTER OF CHARGES AGAINST WILLIAM O.
DODDS, SHERIFF OF MONTGOMERY COUNTY
— APPOINTMENT OF COMMISSIONER**

STATE OF NEW YORK

EXECUTIVE CHAMBER

*In the matter of the charges preferred against William O.
Dodds, the sheriff of the county of Montgomery.*

Charges having been preferred against William O. Dodds, the sheriff of the county of Montgomery, by the Amsterdam Bar Association of the city of Amsterdam, in the said county of Montgomery, and a copy thereof having been served upon the said sheriff, with notice to show cause why he should not be removed from such office, and the said William O. Dodds having filed his answer making general denial to the charges preferred therein:

I do hereby appoint the Hon. Clarence A. Farnum, of Wells-ville, in the county of Allegany, the commissioner to take testimony and the examination of witnesses as to the truth of said charges, and to report the same to me, and also the material facts which he may deem to be established by the evidence; and

It is hereby ordered that the attorney-general of the State of New York conduct the inquiry and examination in the prosecution of the said charges; and

It is hereby further ordered that the said examination before such commissioner proceed with all convenient speed.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twentieth
[L. s.] day of March in the year of our Lord nineteen
hundred and five.

FRANK W. HIGGINS

Governor

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MATTER OF CHARGES AGAINST ABRAM SAM-
MONS, SUPERINTENDENT OF THE POOR OF
ULSTER COUNTY — NOTICE AND SUMMONS**

STATE OF NEW YORK

EXECUTIVE CHAMBER

*In the matter of the charges preferred against Abram Sam-
mons, the superintendent of the poor of Ulster county —
Notice and summons.*

*To ABRAM SAMMONS, superintendent of the poor of Ulster
county:*

You are hereby notified that charges of misappropriation of moneys of the county of Ulster, and the town thereof, held by you in trust as superintendent as aforesaid, and of incompetency and extravagance, and of improper conduct, and conduct corrupt and contrary to good morals, have been preferred against you in your capacity as superintendent of the poor of

the county of Ulster by the Board of Supervisors of said county, and a copy of said charges is herewith served upon you.

You are hereby further notified to file your answer with me on or before the twenty-seventh day of March, 1905, and to appear before me at the Executive Chamber in the city of Albany on the first day of April, 1905, at ten o'clock in the forenoon of that day, when you will be afforded an opportunity to be heard in your defense in answer to such charges.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twentieth
[L. s.] day of March in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

Governor

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MATTER OF CHARGES AGAINST ABRAM SAM-
MONS, SUPERINTENDENT OF POOR, ULSTER
COUNTY—APPOINTMENT OF COMMISSIONER**

STATE OF NEW YORK

EXECUTIVE CHAMBER

*In the matter of the charges preferred against Abram Sam-
mons, the superintendent of poor of the county of Ulster.*

Charges having been preferred against Abram Sammons, the superintendent of poor of the county of Ulster, by the Board of Supervisors of the said county of Ulster, and a copy thereof having been served upon the said superintendent of poor, with notice to show cause why he should not be removed

from such office, and the said Abram Sammons having filed his answer making general denial to the charges preferred therein :

I do hereby appoint Hon. Egbert E. Woodbury, of Jamestown, in the county of Chautauqua, New York, the commissioner to take testimony and the examination of witnesses as to the truth of said charges, and to report the same to me, and also the material facts which he may deem to be established by the evidence ; and

It is hereby ordered that the attorney-general of the State of New York conduct the inquiry and examination in the prosecution of the said charges ; and

It is hereby further ordered that the said examination before such commissioner proceed with all convenient speed.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this first day
[L. s.] of April in the year of our Lord nineteen hundred
and five.

FRANK W. HIGGINS

Governor

By the Governor :

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF SENATE BILL No. 1130 — MAK-
ING AN APPROPRIATION FOR THE NEW
YORK STATE REFORMATORY AT ELMIRA**

STATE OF NEW YORK

EXECUTIVE CHAMBER

It appearing to my satisfaction that the public interest requires it ;

THEREFORE In accordance with the provisions of section 15 of article III. of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Senate Bill No. 1130 (Introductory No. 852) entitled: "An act making an appropriation for the New York State Reformatory at Elmira."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fourth
[L. S.] day of April in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MEMORANDUM FILED WITH UTICA COURT
HOUSE BILL—APPROVED.**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, April 4, 1905

I have this day signed Mr. Gates' Utica courthouse bill.

The sole purpose of this bill is to increase from \$350,000 to \$870,000, the amount authorized to be expended by virtue of chapter 89 of the laws of 1901, by a board of commissioners named in that act, for the acquisition of a site and the erection thereon and furnishing of a suitable building for a new courthouse in the city of Utica.

The Court of Appeals in *People ex rel the Board of Commissioners v. Board of Supervisors of Oneida county* (170 N. Y. 105), held that the original act violated no constitutional guarantee of local home rule. Judge Haight, writing the opinion of the court, said that "the legislature has the power to provide buildings and courtrooms in which the courts of the State may hold sessions and dispose of the civil and criminal cases that may be brought to trial. * * * It may be done through such agents of the State as the legislature shall provide."

I heartily approve the general principle that the regulation of purely local affairs of cities or counties, or other civil divisions of the State, should, as a rule, be left to their people or their local officers. The State, however, necessarily retains the power to act through its own agents in providing localized facilities for the exercise of State functions at the expense of the locality chiefly concerned. It has already exercised that power by providing for the construction of the new courthouse.

As I am satisfied that a proper site cannot be acquired and a suitable building, as described in the original act, completed ready for use for the sum first named, and as this amendment has strong local support, I have reached the conclusion that I am not justified in nullifying the purpose of the law, at this time, by returning the bill without my approval.

FRANK W. HIGGINS

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF SENATE BILL No. 1161, AMEND-
ING THE ACT PROVIDING FOR AN ENUMER-
ATION OF THE INHABITANTS OF THE
STATE**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section 15 of article III. of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Senate Bill No. 1161 (Introductory No. 869), entitled: "An act to amend chapter eighty-three of the laws of nineteen hundred and five, entitled: 'An act to provide for an enumeration of the inhabitants of this State, and making an appropriation therefor,' in relation to the items of enumeration and the preparation and filing of election district boundaries."

Given under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this sixth day
[L. s.] of April in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL, INTRO-
DUCTORY No. 26; PROVIDING FOR AN AD-
DITIONAL SUPPLY OF WATER FOR NEW
YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly Bill, Introductory No. 26, Printed No. 2080, entitled "An act to provide for an additional supply of pure and wholesome water for the city of New York; and for the acquisition of lands or interest therein, and for the construction of the necessary reservoirs, dams, aqueducts, filters, and other appurtenances for that purpose; and for the appointment of a commission with the powers and duties necessary and proper to attain these objects."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this eleventh
[L S] day of April in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MEMORANDUM FILED WITH SENATE BILL No.
892; TAXING TRANSFERS OF STOCK—AP-
PROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, April 19, 1905

*Memorandum on Senate Bill, Introductory No. 346, Printed
No. 892, introduced by the Committee on Taxation and
Retrenchment, entitled "An act to amend the tax law,
by providing for a tax on transfers of stock."*

I have given my approval to the above bill. It imposes a tax of two dollars per hundred shares on transfers of corporate shares or two cents on each one hundred dollars par value thereof. The tax is moderate in amount, and similar taxes are levied in other countries, and were levied in the United States under the war revenue tax law. It has been argued with much force, and a great deal of truth, that the business of dealing in corporate shares is necessary and useful. It has been asserted that even as small a tax as that imposed by this act must either suppress the business almost entirely or drive it out of the State. Experience with taxes of this sort on the continent of Europe does not seem to indicate that the business of stock brokers has been suppressed or even seriously checked by them.

It may be said in favor of the tax that there is perhaps no other sort of capital which at present escapes taxation as completely as that employed in stock transactions. It is generally conceded that the imposition of a like tax by Congress during the Spanish war did not drive business out of the United

States and did not cause great hardship to those engaged in the business of dealing in stocks.

A State tax of this kind is undoubtedly to some degree experimental in its character. If its results are those which we have every reason to expect, it will produce a substantial revenue without seriously burdening the business interests and financial welfare of the State. If on the other hand, it should prove that the bill is a disappointment in the way of producing revenue, or inimical to the welfare of the State, the deliberations and recommendations of the commission to consider revenue and taxation, which I trust will be provided for at the present session of the Legislature, will suggest a more equitable and productive substitute.

FRANK W. HIGGINS

**VETO OF SENATE BILL No. 1010 — RELATING TO
THE PROTECTION OF PERSONS EMPLOYED
ON BUILDINGS**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, April 25, 1905.

TO THE SENATE:

I herewith return without my approval Senate bill printed number 1010 entitled "An act to amend the labor law relating to the protection of persons employed on buildings in cities."

My reasons therefor are as follows:

The present law provides for the protection of persons employed on buildings in cities, that if contractors use elevators or hoisting apparatus within a building during progress of

construction, for the purpose of lifting materials, the shafts or openings on each floor shall be fenced with a barrier at least eight feet high.

The proposed amendment reduces the height of the barrier to six feet and excepts from the requirement of such a barrier "the sides used for taking off and putting on materials," and provides that "those sides shall be adequately guarded, protected or inclosed."

The amendment would permit the contractor to do away with the use of barriers on all sides of the shaft, provided all sides were used for taking on or putting off materials and were "adequately guarded." Whether his method of guarding the same was "adequate" would in such cases be a disputed question of fact.

If the present law is oppressive, the amendment should provide a specific substitute describing by what doors or gates the side or sides used for taking off and putting on materials should be protected.

Contractors should not be encouraged in carelessness by any relaxation of the laws for the protection of workers.

FRANK W. HIGGINS

**VETO OF SENATE BILL No. 515—IN RELATION
TO PROCEEDINGS FOR THE CONDEMNATION
OF REAL PROPERTY**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, April 27, 1905

TO THE SENATE:

I herewith return without approval Senate bill (Introductory number 155, Printed number 515), entitled: "An act

to amend the code of civil procedure, in relation to proceedings for the condemnation of real property."

My objections thereto are that the bill, in my judgment, is a dangerous innovation of at least doubtful constitutionality. At the present time the plaintiff in proceedings to take real property by the right of eminent domain is allowed, under certain conditions, to take possession of the real property to be taken, while the proceedings are pending, "upon depositing with the court the sum stated in the answer as the value of the property." (Code Civil Procedure, section 3380.)

Under the proposed amendment the plaintiff may, upon filing his petition, be permitted to enter immediately upon the real property to be taken in all cases, if it appears to the satisfaction of the court that the public interests will be prejudiced by delay, "upon giving such security as the court may direct."

The Constitution provides that "private property shall not be taken for public use, without just compensation." Lewis on Eminent Domain says (p. 1061) that "where the Constitution does not provide for possession upon giving security such laws are invalid." Without passing upon this constitutional question, I think that when a public service company seeks to take the land of another against his will, the owner should either be permitted to retain possession of his land pending the proceedings, or be protected by a deposit of money equal in amount to his own estimate of the value of the land, and should not be relegated to a bond, subject to the risk that the security may be inadequate or may become worthless.

FRANK W. HIGGINS

VETO OF ASSEMBLY BILL No. 1392—IN RELATION TO THE CELEBRATION OF MEMORIAL DAY IN THE BOROUGH OF RICHMOND

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, April 28, 1905

TO THE ASSEMBLY:

I herewith return without approval, Assembly bill (Introductory number 1135, Printed number 1392), entitled: "An act authorizing the board of estimate and apportionment of the city of New York to make appropriations for the celebration of Memorial day in the borough of Richmond."

My objections thereto are as follows:

This bill provides that the board of estimate and apportionment of the city of New York may appropriate not more than \$300, for the celebration of Memorial day in the borough of Richmond. Chapter 332 of the Laws of 1905, entitled: "An act to authorize the expenditure by the city of New York of money for the proper celebration of Memorial day in the year nineteen hundred and five," provides that the board of estimate and apportionment of the city of New York may appropriate such sum as it may deem advisable to expend in the various boroughs of said city for the proper celebration of Memorial day, and to borrow money without limit as to amount therefor.

Ample provision has therefore been made for the proper celebration of Memorial day in the city of New York, including the borough of Richmond, and no further legislation on that subject is necessary at this session.

FRANK W. HIGGINS

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2337—
AMENDING THE CHARTER OF NEW YORK
RELATIVE TO THE DEPARTMENT OF
STREET CLEANING**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2337 (Introductory No. 1454), entitled: "An act to amend sections five hundred and thirty-four, five hundred and thirty-nine, five hundred and forty-one, and five hundred and forty-seven, of the Greater New York charter, and the acts amendatory thereof, relative to the department of street cleaning."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this first day
[L s] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF SENATE BILL NO. 1531 (INTRO-
DUCTORY NO. 1023)—REGARDING THE TAX-
ATION OF MORTGAGES**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Senate bill number 1531 (Introductory No. 1023), entitled "An act to amend the tax law in relation to the taxation of debts secured by mortgages."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day
[L. S.] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2360—IN
RELATION TO THE PRICE OF ELECTRICITY
IN NEW YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2360 (Introductory No. 1593), entitled: "An act in relation to the price of electric current furnished or sold in the city of New York, for light, heat, power or other purposes to consumers other than said city and providing a penalty for violation."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day
[L S] of May in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL NO. 2371 (IN-
TRODUCTORY NO. 1588) CONCERNING ELEC-
TRIC CURRENT SOLD TO THE CITY OF NEW
YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2371 (Introductory No. 1588), entitled "An act in relation to the price of electric current furnished or sold to the city of New York, and providing a penalty for violation."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day of
[L. s.] May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2372 —
CONCERNING THE QUALITY OF GAS SOLD
IN NEW YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2372 (Introductory No. 1590), entitled: "An act in relation to illuminating gas in the city of New York and regulating the quality and pressure thereof and the price to consumers other than said city and providing a penalty for violation."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day
[L S] of May in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2356 —
RELATIVE TO THE INSPECTION OF ILLUM-
INATING GAS IN NEW YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2356 (Introductory No. 1591), entitled: "An act to amend the Greater New York charter, relative to the inspection of illuminating gas and tests thereof."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day
[L S] of May in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2358--IN
RELATION TO THE PRICE OF GAS IN NEW
YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2358 (Introductory No. 1589), entitled: "An act in relation to the price of illuminating gas furnished or sold to the City of New York, and providing a penalty for violation."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day
[L. s.] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2361 — PRO-
VIDING FOR THE MANUFACTURE OF ELEC-
TRICITY FOR NEW YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2361 (Introductory No. 1587), entitled: "An act to provide for the utilization, by the city of New York, of its water supply for the purpose of generating electric current for the use of said municipality."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day
[L s] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2364 — PRO-
VIDING FOR A TAXATION COMMISSION**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2364 (Introductory No. 1594), entitled: "An act to provide for a commission to inquire into the subject of taxation for state and local purposes, and the expediency of revising and amending the laws relating thereto, and making an appropriation therefor."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day
[L. S.] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF SENATE BILL No. 1288—AMEND-
ING THE LIQUOR TAX LAW IN RELATION
TO LOCAL OPTION**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Senate bill number 1288 (Assembly reprint No. 2373), entitled: "An act to amend the liquor tax law in relation to local option, persons who shall not traffic in liquors, cancellation proceedings, convictions, and reports and fees of county clerks."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day
[L s] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2355—PRO-
VIDING FOR A COMMISSION OF GAS AND
ELECTRICITY**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2355 (Introductory No. 1592), entitled: "An act to establish a commission of gas and electricity with power to regulate the price of gas and electric light and certain other electric services, and to provide for the control and supervision of gas, electric light and other electric corporations and making an appropriation therefor."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day
[L S] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2363 — IN
RELATION TO THE TAXATION OF MORT-
GAGES**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2363 (Introductory No. 1585), entitled: "An act to amend the tax law in relation to the taxation of debts secured by mortgages."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day
[L S] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 1696—
PROVIDING FOR ANNUAL REPORTS ON AC-
COUNTS OF COUNTIES**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 1696 (Senate reprint No. 1533), entitled: "An act to provide for annual reports by and the examination of accounts of counties, cities of the second and third classes and villages having a population of three thousand or more, the tabulation of comparative statistics as to the cost of maintaining the various branches of government in such municipalities and making an appropriation therefor."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this third day
[L S] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF SENATE BILL No. 856 — AMEND-
ING AN ACT IN RELATION TO THE TRAFFIC
IN LIQUORS**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Senate bill number 856 (Assembly reprint No. 2264), entitled: "An act to amend 'an act in relation to the traffic in liquors, and for the taxation and regulation of the same, and to provide for local option, constituting chapter twenty-nine of the general laws,'" as amended.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fourth day
[L S] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2371 —
AMENDING THE ACT IN RELATION TO THE
PRICE OF ELECTRICITY SOLD TO THE CITY
OF NEW YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2371 (Introductory No. 1588), entitled: "An act in relation to the price of electric current furnished or sold to the city of New York and providing a penalty for violation," as amended.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fourth day
[L s] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2356—
AMENDING THE GREATER NEW YORK
CHARTER RELATIVE TO THE INSPECTION
OF GAS**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2356 (Introductory No. 1591), entitled: "An act to amend the Greater New York charter relative to the inspection of illuminating gas and tests thereof," as amended.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fourth day
[L s] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2372—
AMENDING AN ACT REGULATING THE
QUALITY OF GAS IN NEW YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2372 (Introductory No. 1590), entitled: "An act in relation to illuminating gas in the city of New York and regulating the quality and pressure thereof and the price to consumers other than said city and providing a penalty for violation," as amended.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fourth day

[L S] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2360 —
AMENDING AN ACT IN RELATION TO THE
PRICE OF ELECTRICITY IN NEW YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2360 (Introductory No. 1593), entitled: "An act in relation to the price of electric current furnished or sold in the city of New York for light, heat, power or other purposes to consumers other than said city and providing a penalty for violation," as amended.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fourth day
[L S] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF SENATE BILL No. 1532—
AMENDING AN ACT RELATIVE TO THE IN-
SPECTION OF HOTELS**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Senate bill number 1532 (Introductory No. 1031), entitled: "An act relative to the inspection of hotels and the revocation of liquor tax certificates," as amended.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fourth day
[L s] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2380—
PROVIDING FOR THE ANNUAL CONTRIBU-
TION TO THE CANAL DEBT SINKING FUNDS**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2380 (Introductory No. 1602), entitled "An act to provide ways and means for the annual contribution to the canal debt sinking funds."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fourth day
[L s] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF ASSEMBLY BILL No. 2381—
SUPPLEMENTAL SUPPLY BILL.**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill number 2381 (Introductory No. 1603), entitled: "An act making appropriations for certain expenses of government and supplying deficiencies in former appropriations."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fourth day
[L S] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF SENATE BILL No. 1523 — IN RE-
LATION TO THE PRICE OF ILLUMINATING
GAS SOLD TO THE CITY OF NEW YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Senate bill number 1523 (Introductory No. 1025), entitled "An act in relation to the price of illuminating gas furnished or sold to the city of New York and providing for a penalty for violation."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fourth day
[L s] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MESSAGE RECOMMENDING THE REPEAL OF
THE SAVINGS BANK TAX**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, May 4, 1905

TO THE LEGISLATURE:

I respectfully call attention to the portion of my annual message relating to the repeal of the tax imposed on the surplus of savings banks by chapter 117 of the laws of 1901, which reads as follows:

"The tax on the surplus and undivided profits of savings banks appears in its practical operation to be a tax upon the depositors, and is therefore, contrary to the long-established policy of the State to exempt from taxation the savings of those who make use of these banks. The amount of the tax is charged against the current earnings of the bank and is not taken from the surplus, and it is claimed that the bank is, therefore, unable to pay the same rates of interest to depositors as it would if the tax were not imposed. A reduction of the interest on these accounts is a hardship to those affected thereby, and I recommend the repeal of this tax. The receipts from this source for the past fiscal year were \$720,000.00, and the revenue thus lost must be made up; but at the same time justice seems to demand that this tax be abolished and that some more equitable method of raising the amount be resorted to."

A bill to carry into effect this recommendation, introduced on the first day of the legislative session, still remains in committee. With the unexpected and increasing demands for the

payment of claims against the state which have been held by the courts to be justly due, with the equally unexpected curtailment of revenue, also due to judicial decisions, and with the unavoidable extraordinary expenses of this session, doubt has arisen in the minds of some as to the wisdom of surrendering any source of present revenue. It has been urged that the Empire State cannot be either penurious or niggardly in the exercise of its public functions; that it should not in honor and good faith seek to hinder nor delay its creditors and that it cannot with prudence release the savings banks from the burden of this tax at the present time.

But pledges to the people must faithfully be kept and cannot safely be ignored on the specious plea of necessity. The Republican party is committed to this repeal by the repeated public declarations of its candidates. It cannot afford to refuse to do its duty in this regard. The reasons for relieving the savings banks from this tax as a matter of justice, are more cogent now than at the opening of the session.

I therefore recommend that the Legislature take immediate favorable action on the bill to repeal this tax.

FRANK W. HIGGINS

**CERTIFICATION OF THE NECESSITY OF THE
PASSAGE OF SENATE BILL No. 606—ADD-
ING AN ARTICLE TO AN ACT IN RELATION
TO THE ELECTIONS**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Senate bill number 606 (Assembly reprint No. 2262), entitled: "An act to amend chapter nine hundred and nine of the laws of eighteen hundred and ninety-six, being an act entitled: 'An act in relation to the elections constituting chapter six of the general laws,' passed May twenty-seventh, eighteen hundred and ninety-six, by adding thereto an additional article to be known as article nine."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fifth day
[L S] of May in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor :

FRANK E. PERLEY

Secretary to the Governor

**MEMORANDUM FILED WITH ASSEMBLY BILL
No. 2331 — AMENDING THE TAX LAWS IN RE-
LATION TO TAXABLE TRANSFERS OF PROP-
ERTY — NOT APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, May 22, 1905

Memorandum filed with Assembly bill number 2331, (Introductory No. 1573, introduced by Mr. McKeown), entitled: "An act to amend the tax laws in relation to taxable transfers of property." Not approved.

This bill amends section 230 of the tax law, in relation to the appointment of appraisers, stenographers, etc.; and section 234 of the same law, in relation to surrogates and their assistants.

Chapter 368 of the laws of 1905, approved May 4th, amending the tax law generally in relation to taxable transfers, having become a law, this bill cannot be approved without destroying the provisions of that law which are inconsistent with the provisions of this bill.

Section 230 in the law of 1905 has to do with proceedings by an appraiser, and section 234 deals with surrogates' assistants in *New York* and other counties.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH ASSEMBLY BILL
No. 2208—FOR THE RELIEF OF ADELIA
QUEENIE BARKER—NOT APPROVED**

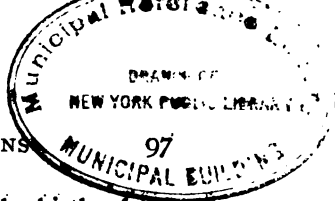
STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, May 23, 1905

Memorandum filed with Assembly bill number 2208, (Introductory No. 1528), entitled "An act for the relief of Adelia Queenie Barker." Not approved.

This bill presents an astonishing proposition, but the most astonishing thing about it is that it passed both houses unnoticed and without opposition or discussion. It is an insult to every faithful wife and to womanhood itself. The bill recites that Adelia Queenie is the bastard infant child of Charles Bell Barker and Adelia Gertrude Stringer, and enacts that said child is thereby made the legitimate child of its said parents in all respects the same as if said child had been born



in lawful wedlock. The father at the time of the birth of the child had and now has a lawful wife living. He and his paramour, with brazen impudence and utter disregard of the rights of the lawful wife and the rules of morality, unite in a petition to the Legislature to legitimize the issue of their lawless love. If this bill should be approved, a legal status would be given to a semi-polygamous relation and concubinage would become an honorable estate.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH ASSEMBLY BILL
No. 1384 AND SENATE BILL No. 805 RAISING
SALARIES IN THE OFFICES OF THE
SHERIFF AND REGISTER OF KINGS COUNTY
— NOT APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, May 23, 1905

Memorandum filed with Assembly bill number 1384, (Introductory No. 1127), entitled: "An act to amend chapter seven hundred and six of the laws of nineteen hundred and one, entitled 'An act to make the office of register of the county of Kings a salaried office and regulating the management of said office,' as amended by chapter six hundred and ninety-nine of the laws of nineteen hundred and four, relating to additional assistants, clerks, employees, or subordinates in said office and fixing salaries of assistants, clerks, employees, or subordinates in said office;" and

Senate bill number 805 (Introductory No. 289), entitled: "An act to amend chapter seven hundred and five of the laws of nineteen hundred and one, entitled 'An act to make the

office of sheriff of the county of Kings a salaried office, and regulating the management of said office,' relative to the number of certain employees or subordinates." Not approved.

These bills increase the number of employees, and raise salaries, in the offices of the sheriff and register of Kings county. The total increase of salaries in the register's bill is \$45,250 per annum. The total increase of salaries in the sheriff's bill is \$19,100 per annum. The total increase in both offices is \$64,350 per annum.

In my opinion it is not the proper function of the Legislature to fix the number and salaries of subordinates in county offices. The local authorities should have the power to regulate these matters. Whether there should be fifty copyists or 35 in the register's office, and whether there should be nine cleaners or three in the sheriff's office, are questions best decided by the board of estimate and apportionment after a hearing. Before these offices were made salaried offices they were reputed to be highly remunerative. If the Legislature continues to multiply places and increase salaries, they will cease to be self-supporting.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH ASSEMBLY BILL
No. 1273 — AMENDING THE RAILROAD LAW
IN RELATION TO THE INSPECTION OF
LOCOMOTIVE BOILERS — APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, May 25, 1905

Memorandum filed with Assembly bill number 1273, (Introductory number 1030), entitled "An Act to amend the railroad

law, in relation to the inspection of locomotive boilers" — Approved.

This is a bill to provide for the inspection of railroad locomotive steam boilers under the supervision of a state inspector.

State inspectors test the boilers of all steam vessels navigating the waters within the jurisdiction of the state, excepting vessels which are subject to inspection under the strict inspection laws of the United States. The Labor Law provides for the inspection of boilers in factories and mines. The Greater New York charter provides for the inspection of steam boilers in the City of New York. The strength and security of locomotive boilers should also be tested and certified to at reasonable intervals, in order to protect the traveling public and the firemen and engineers. Many accidents, of which the engineers and firemen are almost invariably the victims, have resulted from explosion of locomotive boilers. This bill has the support of the brotherhoods of locomotive engineers and firemen. Reasonable requests for legislation calculated to reduce the risks of necessarily hazardous employments are entitled to consideration.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH SENATE BILL No.
203 — RELATIVE TO SALARIES IN THE
OFFICE OF THE SHERIFF OF NEW YORK —
NOT APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, May 29, 1905

Memorandum filed with Senate bill number 203, (Introductory number 193), entitled "An Act to amend chapter five

hundred and twenty-three of the laws of eighteen hundred and ninety, entitled 'An Act in relation to the office of sheriff of the City and County of New York,' relative to salaries."

Not approved.

This bill increases the salary of the under-sheriff of the County and City of New York from \$5,000 to \$6,000 per annum, and raises the salaries of twelve assistant deputy sheriffs from \$1,000 to \$1,500 per year, making a total annual increase of \$7,000 in the expense of the office.

This is not a city bill, although the City of New York is the paymaster. It does not require the approval of the city. It is therefore necessary that I should act with due caution before compelling the city to pay increased salaries. As it does not appear that competent men cannot be retained at the present salaries, I am of the opinion that the interests of State, county and city do not require me to approve the measure.

FRANK W. HIGGINS

MEMORANDUM FILED WITH BILLS AUTHORIZING THE PAYMENT OF PERSONS APPOINTED TO PUBLIC OFFICE IN VIOLATION OF THE CIVIL SERVICE LAW—NOT APPROVED

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, May 29, 1905

Memorandum filed with bills authorizing the payment of persons appointed to public office or employment in violation of the Civil Service Law.

Not approved.

Many bills have come to my hands which authorize persons who have been appointed to or employed in public positions in violation of the Civil Service Law to go before the Court of Claims, or the Comptroller of the City of New York, or the Board of Estimate and Apportionment, to obtain the audit and allowance of claims for services rendered. I have disapproved such bills on the ground, first, that the appointments were made in violation of law, and that the law cannot be sustained if persons so appointed are to be allowed to collect from the State, or the civil divisions thereof, for services rendered by them under such illegal appointment; and secondly, because all such persons have an adequate remedy at law. The Civil Service Law section 7, provides as follows:

“Any person employed or appointed contrary to the provisions of this act or of the rules and regulations established thereunder, shall be paid by the officer or officers so employing or appointing, or attempting to employ or appoint him, the compensation agreed upon for any services performed under such appointment or employment, or in case no compensation is agreed upon, the actual value of such services, and any expenses incurred in connection therewith, and shall have a cause of action against such officer or officers or any of them for such sum or sums and for the costs of the action. No public officer shall be reimbursed by the State or any of its civil divisions for any sums so paid or recovered in any such action.”

FRANK W. HIGGINS

**LETTER OF SUPERINTENDENT KILBURN IN
REPLY TO CHARGES MADE BY GEORGE VON
UTASSY**

STATE OF NEW YORK

BANKING DEPARTMENT

Albany, May 27, 1905

HON. FRANK W. HIGGINS, Governor,

Executive Chamber, Albany, N. Y.

Dear Sir: I have the honor to acknowledge receipt of your letter of the 26th inst., inclosing copy of communication to you from George Von Utassy.

In January, 1903, a report was made to me by examiners of the banking department from which it appeared that the Merchants' Trust Company, of the city of New York, had loaned \$4,048,000 upon securities of a class which might be termed "slow assets" and consisted:

1st. Of the bonds and stock of the Virginia Passenger and Power Company; bonds of the South Side Development and Railway Company, the Richmond and Manchester Railway Company, and the Richmond Passenger and Power Company, and various other bonds of small amounts, the loans upon these bonds being to the Atlantic Development Company of Virginia, amounting to the sum of \$1,387,159.12, and \$824,625 to the Richmond Passenger and Power Company.

2nd. It had loaned to the Hudson Valley Railway Company \$846,861.70 upon the bonds of that company.

3rd. It had loaned to the Chittenden Development Company and the Rutland Street Railway Company, of Rutland, Vermont, \$467,358 upon the bonds of the Rutland Street Railway Company, the Chittenden Power Company, and the People's Gas Company.

4th. It had made various other loans, amounting to about \$520,000, upon the same general class of securities.

In addition the company had guaranteed loans made in the interest of the Atlantic Development Company to the amount of \$750,000.

I at once entered upon the task to have the company relieved of these loans and securities, which, in my opinion, was a much wiser course than an attempt at that time to put the company in the hands of a receiver. I gave, and have continued to give, the matter my earnest personal attention, with the result that I have succeeded in having the trust company relieved of \$2,120,173 of the Virginia Companies' loans and securities, and of \$98,834 of the \$520,000 of various other loans, making an aggregate of \$2,219,000 of loans retired. I have also had the trust company relieved of its guarantee of \$750,000, above mentioned, making a total of nearly three millions of dollars.

At the time the report of examination was made to me there was not, in my opinion, sufficient ground to conclude that the company was insolvent, nor that its capital was impaired, for, while these securities which I have referred to were not readily marketable, it was yet claimed that they were of a value sufficient to maintain beyond question the solvency of the trust company. Had any step then been taken to throw the company into a receivership, it would undoubtedly have resulted in a sacrifice of these securities, and in great loss to the depositors. Such a course was not, in my opinion, justifiable, although, so far as I was concerned, it would at once have relieved me of further responsibility and anxiety. I believed it to be my duty to save the company, if possible; and if not, to at least save everything possible out of it, and to that end I have given its affairs my unremitting and anxious attention.

At the time of the examination the obligations of the trust company to depositors were a trifle less than \$5,250,000, while at the present time it owes depositors about \$2,000,000.

The "slow assets" consist at the present time in the main of bonds of the Hudson Valley Railway Company, and of certain power, street railway and lighting companies in Rutland, Vermont. These securities have substantial value, and it is expected that the receivers will ultimately obtain for them sufficient to pay depositors in full. The detailed figures relating to these securities, as well as to other transactions, are matters of record on file in my office.

The statute clothes me with discretion in determining when "it is unsafe and inexpedient for such corporation * * * * to continue business," and the facts and results show that I have exercised my judgment and discretion wisely, and in the interests of the trust company and its depositors. Neither at the time of the examination, nor at any time since, have I had sufficient grounds, in my opinion, to report to the attorney-general that the company was insolvent.

Ever since the Richmond securities were taken out it has been my constant endeavor to have the company relieved of the Hudson Valley Railway and Rutland securities. Negotiations have been pending looking to the sale of these securities, and especially those of the Hudson Valley Railway Company, and strong assurances have been repeatedly given that efforts in this direction would be successful. What amounted substantially to offers to purchase these securities were made, but did not reach figures which the trust company felt justified in accepting, and when it appeared that an expeditious sale could not be made at a proper sum, it seemed to me to be in the interests of the depositors of the trust company that a receiver should be appointed, and, therefore, exercising to the

best of my judgment the discretion conferred upon me by law, I reported to the attorney-general that it was unsafe and inexpedient for the trust company to longer continue business.

I most emphatically deny each and every charge contained in the communication addressed to you, and I respectfully submit that I have acted prudently and wisely in the matter throughout, and entirely within the law. I have the honor to remain,

Very respectfully yours,

F. D. KILBURN,
Superintendent.

IN RELATION TO CHARGES AGAINST F. D. KILBURN, SUPERINTENDENT OF BANKS, BY GEORGE VON UTASSY — CHARGES DISMISSED

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, May 29, 1905

Superintendent of Banks Kilburn has submitted to me, in response to my request, a written statement of his official acts in relation to his supervision of the affairs of the Merchants' Trust Company during the period covered by the charges filed by George Von Utassy. Reading his statement in connection with the charges, and after consultation with the attorney-general and the counsel to the Governor on the legal questions involved, I have decided that the Superintendent of Banks acted in the matter in accordance with law, and exercised proper judgment and prudence in so doing. The charges against him are hereby dismissed.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH ASSEMBLY BILL
No. 1239—PROVIDING FOR THE CONSTRUCTION OF A BRIDGE AT GRAND ISLAND
ACROSS THE NIAGARA RIVER—NOT APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 1, 1905

Memorandum filed with Assembly bill number 1239, (Introductory number 133), entitled "An Act to enable the county of Erie and the town of Grand Island to construct a bridge from the town of Grand Island across the east branch of Niagara River to the mainland, and to issue bonds therefor."

Not approved.

Section 9 of this bill provides that "The improvements provided for in the foregoing sections of this act, excepting section two, shall not be commenced, nor shall bonds be issued therefor, nor shall any liability thereunder be incurred by the county of Erie or the town of Grand Island, unless at a general election the proposition whether the improvement hereinbefore provided for shall be made and such bonds issued shall have been submitted to the electors of the county of Erie and receive a majority vote of the electors of said county voting on said proposition, who are qualified to vote at a general election. Notice that the same will be so submitted shall be given by the county clerk of the county of Erie in the same manner that notice of the general election is given. The county clerk of Erie county shall provide upon the official ballot for the next general election for voting for and against the building of a bridge under this act. The result of such

election shall be canvassed by the board of supervisors and declared in the same manner as the result of an election of the state and county officers."

Chapter 643 of the laws of 1905, amending the election law relative to the duties of the Commissioner of Jurors of the County of Erie, transfers from the County Clerk of Erie County to the Commissioner of Jurors of said county the duty of giving notice of elections, and of providing ballots therefor. This bill should conform to the general law. In its present form it is defective, and I am precluded from considering the bill on its merits.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH PRIVATE CLAIM
BILLS — NOT APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 1, 1905

Memorandum filed with private claim bills waiving the statute of limitations or the provisions of the canal law relative to damages resulting from navigation of the canals.

Not approved.

The Code of Civil Procedure limits the jurisdiction of the Court of Claims in cases of private claims against the State to such as have accrued within two years before the claim is filed.

The Canal Act provides that claims shall not be allowed for damages resulting from navigation of the canals.

These bills empower the persons named therein to sue the State, while every other citizen is obliged to comply with the general law. It seems inexpedient to legislate for individuals in these matters. If the general law is too severe, it should be so amended as to enable all of a class to avail themselves of its provisions.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH SENATE BILL No.
1062 — AMENDING THE CHARTER OF BUF-
FALO — NOT APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 1, 1905

Memorandum filed with Senate bill number 1062, (Introductory number 514), entitled "An Act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An Act to revise the charter of the city of Buffalo' in relation to the position of storekeeper in the fire department of said city."

Not approved.

The charter of the City of Buffalo provides that the Board of Fire Commissioners may appoint a chief engineer and such subordinates as it may deem necessary for the efficient working of the department, and that it shall, subject to the approval of the Common Council, fix the salaries of all its employees.

This bill compels the employment of "a storekeeper whose salary shall be \$1,400 per annum." I am unable to see any

controlling reason for this insistence on the part of the State that the Buffalo Fire Department should have a storekeeper, and should pay him \$1,400. If a storekeeper is necessary and if \$1,400 is a proper compensation for the position, the Fire Commissioners and the Common Council have full power under the existing law to do all that this bill requires.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH SENATE BILL No.
1097 — AMENDING THE AGRICULTURAL
LAW RELATIVE TO CONDENSED MILK—
NOT APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 2, 1905

Memorandum filed with Senate bill number 1097 (Introductory number 835), entitled "An act to amend section twenty-five of the agricultural law, entitled 'An act in relation to agriculture, constituting articles one, two, three, four and five of chapter thirty-three of the general laws,' relative to condensed milk."

Not approved.

Either the title of this bill is misleading or else the bill itself is defectively drafted. It does not, as suggested by the title, amend the agricultural law relative to condensed milk alone, but it establishes rules of evidence and procedure governing the possession and seizure of any article of food, the sale of which is prohibited by the agricultural law. These rules are

in my opinion extraordinarily and unnecessarily arbitrary. They shift the burden of proof from the State to the accused and permit the trial of serious charges upon affidavits. I doubt that the procedure would be sustained as "due process of law."

FRANK W. HIGGINS

**MEMORANDUM FILED WITH SENATE BILL No.
1289—RELATIVE TO A UNION RAILROAD
PASSENGER STATION IN BUFFALO—NOT
APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 2, 1905

Memorandum filed with Senate bill number 1289 (Introductory number 538), entitled "An act creating a commission with power to agree upon a site and general plans of, and to contract for the location and building of a union railroad passenger station, yard, and therewith connected facilities and approaches thereto in the city of Buffalo, and tributary thereto to lease or sell and convey lands belonging to said city, to abandon and close now existing, and establish and open new, and change the location, width or grade of and otherwise improve docks, wharves, parks, streets and public places, and for these purposes to acquire lands and their appurtenances by condemnation proceedings or otherwise."

Not approved.

One insuperable objection exists to this bill which in my judgment renders unnecessary the further consideration of the

measure. The Constitution, (Art. VIII., section 10), provides that "no * * * city * * * shall hereafter give any money or property, or loan its money or credit to or in aid of any * * * corporation; * * * nor shall any * * * city * * * be allowed to incur any indebtedness except for * * * city * * * purposes." This provision was incorporated in the Constitution in 1874 to correct the abuses that had arisen from the practice of bonding municipalities in aid of railroad corporations in exchange for stock issued by such corporations. Great benefits were expected from municipal aid to railroads; disappointed hopes and grievous burdens were the usual results.

This bill renders possible the granting of city property and the incurring of city indebtedness to an unlimited amount in aid of the railroads that enter the City of Buffalo. It seems to me that it practically nullifies the constitutional restriction. The State has ample power to compel the railroads to construct a union station at their own expense if the general welfare of the people demands it. It does not appear that private enterprise and capital are unequal to this undertaking. It does not appear that any considerations exist that demand the relaxation of the rule of strict construction of plain constitutional limitations. I think that the City of Buffalo should not be permitted to incur obligations binding on the city to an unlimited amount for the construction of a railroad station.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH ESCHEAT BILLS
WHICH WERE NOT APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 2, 1905

Memorandum to be filed with escheat bills which have not been approved.

I have not approved the greater number of these bills either because the general law affords adequate relief, because the bills did not receive a two-thirds vote as required by the Constitution, or because the party seeking the release of the State's interest in the lands showed no substantial equity.

All escheat bills are based on a wrong principle. If a man dies leaving resident heirs, the State collects a transfer tax from his estate. If he dies without heirs and the State takes title to his real property, some more or less remote connection of the deceased endeavors to obtain the release of the State's interest by special act. If he succeeds, the State not only loses the transfer tax but also bears the cost of giving away its own property. It is estimated that the expense of printing and passing a bill averages \$750. This is poor business on the part of the State.

The commissioners of the land office should have ample power to deal with all such cases, and no special escheat bill should be sent to the Governor unless the petitioner pays the cost, tax and all necessary expenses. I have followed precedent in approving a few such bills, but I think the practice should be changed.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH SENATE BILL No.
1464 — AMENDING THE LIQUOR TAX LAW —
NOT APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 2, 1905

Memorandum filed with Senate bill number 1464 (Introductory number 1001), entitled "An act to amend subdivision two of section twenty-four of chapter one hundred and twelve of the laws of eighteen hundred and ninety-six, the liquor tax law, as amended by chapter three hundred and twelve of the laws of eighteen hundred and ninety-seven and as amended by chapter four hundred and eighty-five of the laws of nineteen hundred and four, relating to places in which the traffic in liquor shall not be permitted."

Not approved.

This bill, although general in terms, is intended to permit traffic in liquor to be carried on at the Gotham Hotel in the City of New York within 200 feet of the Fifth Avenue Presbyterian Church, without the consent and against the opposition of the church society. It is therefore a special exception to the general rule prohibiting the traffic in liquor to be carried on in any place within the State within 200 feet of a church without the consent of the church. It is probable that this hotel will in no degree disturb the peace and good order of the neighborhood. It is, however, in my judgment, unwise to whittle away the safeguards contained in the general law by special exemptions. Last year an amendment was obtained which would

have enabled this hotel to do business with the consent of the church society. It was expected that this provision would be sufficient, but the church withholds its consent, and now another effort is made to twist the law to meet the case. No substantial distinction exists between a hotel containing 199 rooms or less and a hotel containing 200 rooms or more. The size of a hotel is no guarantee of its orderly character. If that were so, it would follow that the larger the hotel the more desirable it would be as a neighbor to a church.

For these reasons, I disapprove the bill as being unjustifiable special legislation.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH SENATE BILL No.
1552 AND SENATE BILL No. 856 — AMENDING
THE LIQUOR TAX LAW RELATIVE TO
HOTELS — APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 3, 1905

Memorandum filed with Senate bill number 1552 (Introductory number 1031), introduced by Mr. Ambler, entitled "An act relative to the inspection of hotels and the revocation of liquor tax certificates"; and

Senate bill number 856 (Assembly reprint number 2377), introduced by Mr. Raines, entitled "An act to amend 'An act

in relation to the traffic in liquors, and for the taxation and regulation of the same, and to provide for local option, constituting chapter twenty-nine of the general laws.'"

Approved.

These bills are in a sense companion measures. The first provides for the year 1905, and the second is general in its character, but will not operate to any great extent during the year 1905, as liquor tax certificates are issued on the first day of May.

The purpose of those bills is to compel the so-called Raines Law hotels to comply with the provisions of the laws, ordinances, rules and regulations of the State and locality relating to the fireproof construction of hotels, and the laws pertaining to the building and health departments of the State and locality. The proceeding under the Ambler bill is summary in its character, but it can harm no one who is carrying on his business properly under existing law. The provisions of the Raines bill are for the purpose of preventing evasions of the law by requiring a proper inspection of the applicant's hotel before a liquor tax certificate is issued to him.

These bills are in the interest of morality, and are supported by organizations and citizens interested in removing the disgrace that attaches to the name of the so-called Raines Law hotel. If I were not satisfied of the constitutionality of the Ambler bill, it would not receive my approval. It is no more drastic than are prohibitory liquor laws, the constitutionality of which has been upheld by the Supreme Court of the United States. As a general rule, it would be preferable to have the proper inspection made before the certificate is granted, rather than to take away the right to traffic in liquors after the granting of the certificate, because the certificate should not

have been granted in the first instance. For that reason the Ambler bill is temporary in its character only, and will be superseded by the Raines bill at the end of the year.

FRANK W. HIGGINS

**APPOINTMENT OF AN EXTRAORDINARY TRIAL
TERM OF THE SUPREME COURT AT OS-
WEGO AND DESIGNATION OF JUSTICE
WRIGHT THERETO**

STATE OF NEW YORK

EXECUTIVE CHAMBER

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the statute in such case made and provided I do hereby appoint an Extraordinary Trial Term of the Supreme Court to be held at the courthouse in the City of Oswego and County of Oswego, on Monday, the tenth day of July next, at ten o'clock in the forenoon of that day, and to continue so long as may be necessary for the disposal of the business which may be brought before it; and I do hereby designate the

HONORABLE MAURICE L. WRIGHT

of Oswego, who is a Justice of the Supreme Court of the Fifth Judicial District, to hold the said Extraordinary Trial Term as hereinbefore described; and I do further direct that notice of such appointment be given by publication of this order once in each week for three successive weeks in the

Oswego Daily Palladium and the *Oswego Daily Times*, newspapers published in Oswego County.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the City of Albany this third
[L s]. day of June in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MEMORANDUM FILED WITH SENATE BILL No.
877 — REGARDING THE INCORPORATION
AND POWERS OF RAILROAD CORPORA-
TIONS — APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 3, 1905

Memorandum filed with Senate bill number 877 (Introductory number 394), entitled "An act to amend the railroad law in relation to the incorporation and powers of railroad corporations."

Approved.

This bill was criticised when first introduced as being a dangerous measure, but at the time of the hearing before me the bill had been so amended that practically all opposition had disappeared. The powers granted are among those enjoyed by railroad companies in other states and exercised by them in this state until recent decisions of the courts placed a strict

construction on the provisions of the railroad law hereby amended. Approval of this bill will doubtless result in greater efficiency in service to the public by the railroad corporations. No private property can be taken by the railroads except for a public use and after just compensation therefor. I am unable to discover that any rights, public or private, will be jeopardized by the approval of the bill.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH ASSEMBLY BILL
No. 2272 — THE APPROPRIATION ACT — AP-
PROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 3, 1905

Memorandum filed with Assembly bill number 2272 (Introductory No. 419), entitled "An act making appropriations for the support of government."

The total of general appropriations,
exclusive of canal sinking fund
and barge canal appropriations,
passed by the legislature this

year was \$27,184,474 00

I have disapproved bills and items

to the amount of 572,370 67

Leaving a total of \$26,612,103 33

As compared with \$26,467,678 00 for 1904.

Again the direct tax is kept at the lowest point permitted by the Constitution and the barge canal act adopted by the people, being 13/100 of a mill for the old canal debt sinking fund and 24/1000 of a mill for the barge canal debt sinking fund.

The apparent increase in appropriations is not due to extravagance on the part of the present legislature. Such increase is due rather to a desire to meet the obligations of the State and to make adequate provision for the established fixed charges of government.

Owing to the enactment a year ago, of a law providing for increased wages of employes in State hospitals and owing to a deficiency in maintenance appropriations made for such institutions during the last fiscal year, a deficiency existed which it was necessary to provide for in the appropriations of this year, but which properly is not chargeable to this year's expenditures, amounting to \$448,640.77.

Owing to the failure to provide in 1904 a sufficient amount to pay refunds of liquor tax certificates, we have been obliged to appropriate the sum of \$315,000 for that purpose.

Owing to judgments obtained in December, 1904, against the State for refunds of taxes to counties that were bonded for railroad purposes, under the decision of the Court of Appeals in the Ulster county case, we have been compelled to appropriate \$785,000 to pay a sum that in no sense is chargeable upon the expenses of government for this year.

We have also had, in the way of unusual and abnormal expenses, \$300,000 for the State enumeration and \$115,000 for the loss by fire at Elmira reformatory; making in all about \$2,000,000 of appropriations that are not properly chargeable on this year's expenditures.

By deducting this sum from the total net appropriations it will be noted that the actual net expenses of government, regardless of the large natural increase in the number of inmates of our insane asylums and other public institutions, have been largely decreased.

The record of the year has been a highly creditable one. A few meritorious measures failed of passage, but no vicious measure has become law. On the other hand, the liquor tax law, the election law, the labor law and the banking law have been substantially strengthened by wholesome amendments; the claims of the teachers, firemen and policemen in cities have been recognized by helpful legislation; the forests of the State have been protected; the State hospitals for the insane have been again placed under the control of local boards of managers; provision has been made for the inspection of locomotive boilers; the solution of the rapid transit problem in New York city has been aided by the enactment of proper laws; gas and electric companies have been placed under State control and much has been done to curb the exactions of the lighting monopoly in New York city. Every demand for proper reform in the interests of morality, law and order has met a response and no interest of the people has been neglected. I do not recall a session of the legislature which has been more fruitful of good laws or which has produced fewer objectionable ones. The burdens of taxation have not been increased by reason of any avoidable expenditure of money. Provision has been made to meet the deficiencies of previous years and the extraordinary expenses of this year by strengthening the present tax laws and by taxing transfers of stock, rather than by raising the rate of taxation on property or resorting again to the home, the farm and the factory.

If no deficiencies had existed and no unusual expenses had been imperatively demanded, the record for economy would be plainly apparent. I am satisfied with the record and I believe that the people will give it their approval.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH SENATE BILL No.
1531 — PROVIDING FOR THE TAXATION OF
MORTGAGES — APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 3, 1905

Memorandum filed with the Senate bill number 1531, entitled "An act to amend the tax law in relation to the taxation of debts secured by mortgages."

Approved.

This act imposes, in lieu of the present general property tax, an annual tax of one-half of 1 per cent on all mortgages recorded in this State after July 1, 1905, except mortgages given to the commissioners for loaning certain moneys of the United States of the several counties of the State and mortgages owned by the United States or the State, or any corporation or association organized exclusively for charitable, religious or educational purposes; and also mortgages on residence property not exceeding in amount three thousand dollars, on the same piece of property, executed by the shareholders, stockholders or members of the local building, loan and savings associations incorporated or organized under the laws of this State, the business operations of which associations shall hereafter be confined to a single city, village or town.

Mortgages are by the act exempted from taxation by counties, cities and other local subdivisions of the State. Holders of existing mortgages may at their option avail themselves of the privileges of taxation under this act, but existing mortgages are not otherwise affected.

When a mortgage is ~~placed on record~~ after July 1, 1905, the tax thereon must be paid to the first of July next following and annually thereafter. Payments are made to the recording officer. The proceeds of this tax are divided equally between the State and the local subdivisions of the State. It is estimated that it will produce a revenue to the State in the first year of its operation of not less than \$1,500,000.

Mortgages have heretofore been subject to the general tax rate in every locality in the State except when held by exempt holders, non-residents, or persons whose indebtedness is in excess of their personal assessment. The local rate averages at least 2 per cent., and in many localities is much higher. When mortgages have been taxed undue hardship has been the result. When they have escaped taxation discrimination has been made. The tax imposed by the new law is moderate in amount and uniform in operation.

A tax of one-half of one per cent. on all mortgage indebtedness, past and future, was unanimously recommended by the Joint Committee on Taxation of the Senate and Assembly in 1900, in a report signed by Senators Stranahan, Higgins and Grady and Assemblymen Allds (now Senator), Collier and Murphy. That committee stated the following reasons for believing that the tax would not operate as an additional burden upon real estate, but would improve the condition of borrowers:

"First. It was stated to us by Mr. J. Harsen Rhoades, the President of the State Association of Savings Banks, that if mortgages were entirely exempted from taxation, the result

would be a reduction of the average rate of interest paid by borrowers of at least one-half of 1 per cent. Mr. Rhoades was confirmed in this opinion by the presidents of four of the chief savings banks in New York city. This means that although mortgages generally escape taxation, the liability to tax under the existing law affects the interest rate to the extent of at least one-half of 1 per cent. If, then, we exempt mortgages, from all taxation, except to the extent of one-half of 1 per cent., there will naturally be no substantial change in the average rate of interest.

"Second. The experience of former Comptroller Roberts has informed us that when State bonds were offered for sale a year or two ago, the bids came in two ways; one, if the bonds were to be exempt from taxation, and the other, if they were not, and there was a difference in the two rates of nine mills.

"Third. Mr. Frank Bailey, the vice president of the Title Guaranty and Trust Company, of New York city, testified that the result of laying a single tax of four mills on mortgages in Pennsylvania was, that in new loans two rates were indicated, one for interest and one for the four mills tax; but that the two combined were less than the interest alone had been before the change in the method of taxation. Mr. Bailey further testified that the result of exempting mortgages in Massachusetts was that the average interest rate was reduced to three and a half per cent."

These reasons are as cogent now as they were in 1900. The savings banks of the State have deposits of more than a billion dollars, of which many millions are investment deposits, rather than small savings, made, at a rate of interest varying from 3 to 4 per cent, to escape taxation. Non-taxable bonds of the State and nation, bearing but 3 per cent. interest,

command a premium. Large sums now seeking these forms of investment will doubtless become available for mortgage loans when it is certain that the mortgage security will net the lender from four to five per cent on his investment. As stated by Professor Seligman of Columbia College, the well-known student of taxation, in a discussion of the mortgage tax bill of 1900, "Many individuals would welcome the opportunity of investing funds in a species of property which would be taxed at so low a figure. This large influx of capital would of itself tend to reduce the rate of interest."

The allied real estate interests have been well organized against this measure, and have doubtless been effective in developing hostility to the bill. No tax measure is popular. Taxes and death are the two painful certainties that cannot be escaped. It is not difficult to arouse opposition to any new tax measure from those who will be affected thereby. The political party that could honestly promise the abolition of taxation would be deservedly popular.

Tax laws should, in their operation, be uniform, universal and not oppressive. The tax law which this bill supersedes, so far as it affects mortgages, is unequal, partial and unjust. The exemption of mortgages from taxation is one alternative; the imposition of some less crude instrumentality of taxation is the other alternative. The latter alone is practicable at this time.

It has been urged upon me that the approval of this measure will result in disaster to the Republican party. I have avoided the consideration of this measure from a party standpoint. It is a business proposition rather than a political problem. The Republican party is the party of initiative and not the party of opposition. Its disaster has often been predicted, but it has survived the consequences of its policies on

legislation. I shall not be deterred from approving a salutary bill because of its possible effects on the party. I cannot believe that any measure which equalizes the burdens of taxation can prove politically disastrous. It seems to me more disastrous to party interests to allow the present uneven and unfair taxation of wealth represented by mortgages to continue, than to put a stop to the exemptions and evasions which the present law permits.

It is a shortsighted policy for political parties to bid for class support by class legislation. The people are more numerous than any class, and they want fair play all around.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH ASSEMBLY BILL
No. 2361 — PROVIDING FOR THE UTILIZA-
TION BY THE CITY OF NEW YORK OF ITS
WATER SUPPLY — APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 3, 1905

Memorandum filed with Assembly bill number 2361 (Introductory number 1587) introduced by the Joint Committee of the Senate and Assembly, entitled "An act to provide for the utilization, by the city of New York, of its water supply for the purpose of generating electric current for the use of said municipality."

Approved.

This bill provides that "The board of water supply of the city of New York may, subject to the approval of the board

of estimate and apportionment, utilize such water as it now owns or as it may hereafter acquire, for the purposes of generating electric current for the use of the municipality, provided that no additional water shall be used for said purpose than would otherwise be required by the city of New York."

It is to be observed that this bill presents a wholly different proposition from the matter stricken out of the city water supply bill in the Senate. This bill restricts to city purposes the use of the electric current developed, and provides that no additional water shall be used for said purpose than would otherwise be required by the city of New York. The city water supply bill in its original form provided for the sale or lease of power and electricity by the city to private consumers, and for the sale or lease of water when not needed for city purposes. These provisions had not the remotest relation to the solution of the lighting problem, and afforded no protection against the lighting companies. So far as I know, no opposition has manifested itself to the plan of utilizing the water owned or acquired by the city for the purpose of generating an electrical current for a municipal lighting plant. The plan of developing power and selling the same to private consumers was objectionable as having no connection with the main purpose of the water supply bill, as not being a proper city purpose within the meaning of the Constitution (Art. 8 section 10), which provides that no city shall be allowed to incur any indebtedness except for city purposes, and as unnecessary if not improper.

The effect of the omission of the words objected to from the water supply bill and of the present act is sentimental rather than practical. It will be years before such power can be utilized, and when it can be so utilized, according to the opinion of the mayor's expert, John R. Freeman, one of the

members of the Burr-Herring-Freeman commission named by Mayor McClellan to investigate and report on the subject of an additional water supply for New York city, it will be "of no noteworthy account or utility towards any such large requirement as involved in municipal lighting." The power plants would be small, he says, and liable to long and severe interruptions. Doubtless the city should not be deprived of the rights and opportunities, even though relatively insignificant, which may aid it to establish a municipal lighting plant. It is in my judgment extremely doubtful that the omission from the water supply bill of any reference to the development of power could be construed so as to deprive the city of the right to develop and use power for city purposes. If this bill serves no other purpose, it will dispel all doubts on the point. I have therefore given it my approval.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH ASSEMBLY BILL
No. 2381 — SUPPLEMENTAL SUPPLY BILL —
APPROVED**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, N. Y., June 3, 1905

Memorandum filed with Assembly bill number 2381 (Introductory No. 1603), entitled "An act making an appropriation for certain expenses of government, and supplying deficiencies in former appropriations."

Item. "The sum of forty-nine thousand two hundred eighty-three dollars and nineteen cents (re. \$49,283.19), being the unexpended balance of appropriation made by chapter five

hundred forty-one, laws of nineteen hundred three, for the acquisition of a site for a state hospital for the insane in the northeastern part of the state, north of the county of Rensselaer, and for the preparation of plans for such hospital, is hereby reappropriated for the same purpose, and to be paid in the same manner as provided in said act."

Approved.

Pursuant to the directions contained in chapter 541 of the laws of 1903, entitled "An act to provide for the acquisition of a site for a state hospital for the insane in the northeastern part of the state north of the county of Rensselaer, and for the preparation of plans for such hospital, and making an appropriation therefor," the state commission in lunacy, with the approval of my predecessor, selected a site for a state hospital for the insane at Comstocks in Washington county, and entered into contract with the owners thereof for the purchase of the same. The premises consist of 885 acres of land belonging to L. V. Baker, and 60 acres belonging to R. A. Johnson, making a total of 945 acres. The contract price is \$42,500. The site is so located as to be easily approached by railroad and canal.

All the formalities of the act of 1903 have been complied with, and the state is legally obligated to take the land contracted for and pay the purchase price if the owners can give good title. It cannot escape its liability except by the dishonorable procedure of refusing to meet its valid obligations. The appropriation made by the act of 1903 having lapsed by expiration of time, it becomes my duty to approve this item so that the state may be able to perform its part of the contract. The question as to the wisdom of locating a state hospital for the insane in Washington county is one of policy, and that policy was fixed by the act of 1903 which practically located

it there beyond the control of the Legislature of 1904 and beyond my control.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH ASSEMBLY BILL
No. 2381 — MAKING AN APPROPRIATION TO
SUPPLY DEFICIENCIES IN FORMER APPROPRIATIONS**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, N. Y., June 3, 1905

Memorandum filed with Assembly bill number 2381 (Introductory No. 1603), entitled "An act making an appropriation for certain expenses of government, and supplying deficiencies in former appropriations."

Statement of items of above entitled appropriation bill objected to and not approved by the Governor:

LEGISLATURE

Page 3. "For compiling, revising, annotating and indexing the rules of the senate and the assembly and the parliamentary precedents thereunder, twenty-five hundred dollars (\$2,500), or so much thereof as may be necessary, the same to be expended under the direction of the president of the senate and the speaker of the assembly."

"For Charles J. Dodd, for personal expenses and counsel fees incurred in the contest by J. Harvey Waite for the seat of the sixth assembly district of the county of Kings, twenty-five hundred dollars (\$2,500), which sum shall be paid upon the approval of the chairman of the committee on privileges and elections."

"For Thomas F. Matthews, for personal expenses and counsel fees incurred in the contest by Samuel J. Palmer for the seat of the thirteenth assembly district of the county of Kings, fifteen hundred dollars (\$1,500), which sum shall be paid upon the approval of the chairman of the committee on privileges and elections."

"For E. Cook and T. F. C. Clary, counsel to the committee on privileges and elections, for counsel fees in the contest of Waite versus Dodd and in the contest of Palmer versus Matthews, two thousand dollars (\$2,000), which sum shall be paid upon the approval of the chairman of the committee on privileges and elections."

Page 4. "For deficiency in appropriation for advances by the comptroller to the clerk of the assembly for contingent expenses, including stationery, printing and other supplies, two thousand five hundred dollars (\$2,500), or so much thereof as may be necessary."

THE ATTORNEY GENERAL

Page 6. "For Matthew Bender and company, for rebinding law books in the law library of the attorney general, in the year nineteen hundred two, one hundred seventy-three dollars and twenty-five cents (\$173.25), or so much thereof as may be necessary."

"For the services and expenses of counsel and other persons employed by the attorney general in the investigation, conducted by direction of the governor, of alleged trespasses in the forest preserve, eight hundred ninety-five dollars (\$895), or so much thereof as may be necessary."

STATE ENGINEER AND SURVEYOR

Page 7. "For the state engineer and surveyor, for the purpose of carrying out the provisions of chapter one hundred

fifteen, laws of eighteen hundred ninety-eight, in relation to the improvement of public highways by state aid, fifty thousand dollars (\$50,000), or so much thereof as may be necessary."

PRINTING

Page 9. "For the printing of five thousand copies of the final report of the commissioners of the state of New York at the Louisiana purchase exposition held at Saint Louis in the year nineteen hundred four, to be distributed as follows: thirty to each senator, twenty to each member of assembly, three hundred to state officers, and two hundred to the commissioners; and the printing of ten thousand copies of the publication entitled "*The Birds of New York*," prepared under the direction of the education department, to be distributed as follows: thirty to each senator, twenty to each member of assembly, and the balance to the state museum; and for continuing the printing of ten thousand copies of the nature-study and extension bulletins during the current year to be included in the report of the commissioner of agriculture, and to be distributed as he may direct; and the printing of ten thousand copies of the appendix accompanying the seventh report of the forest, fish and game commission, to be distributed as follows: sixty-five copies to each senator and forty-five copies to each member of assembly for nineteen hundred five; all of which are hereby legalized and confirmed, and shall have the same force and effect as if the work therein ordered had been ordered by statute; said work to be performed by the contractor for legislative printing for the year commencing October first, nineteen hundred three; and to be paid for at the amounts audited by the comptroller; and the amount so audited and allowed to be paid upon the filing of the proper receipts in full for said items; the sum of fifty thousand dol-

lars, or so much thereof as may be necessary, payable from the appropriations heretofore made for legislative printing."

DEPARTMENT OF PUBLIC WORKS

Page 13. "For draining Gorman swamp and clearing out Black brook, which flows through state lands in Seneca county, five thousand dollars (\$5,000), or so much thereof as may be necessary, said work to be done under the direction of the superintendent of public works; no part of the moneys to be expended until a release is obtained from and executed by each of the owners of property through which the brook flows, releasing the state from any and all claims for damages by reason of anything done or to be done under this act."

"For relaying, repairing, cleaning out and reconstructing a drain in the village of Middleport, in the county of Niagara, beginning at Main street, in said village, and running thence through State street into culvert number one hundred five under the Erie canal in the eastern part of said village, two thousand dollars (\$2,000), or so much thereof as may be necessary."

"For repairing the break water in Seneca lake known and designated as break water C as shown on plans for the improvement of Watkins harbor, under chapter six hundred ninety-seven, laws of eighteen hundred ninety-nine, on file in the office of the superintendent of public works or in the office of the engineer of the western division at Rochester, situate in the harbor at Watkins on the Chemung canal and in Seneca lake; and also for repairing the break water in Seneca lake just north or northeast of the Northern central railway passenger and freight stations, fifteen thousand dollars (\$15,000), or so much thereof as may be necessary."

TAX COMMISSIONERS

Page 15. "For the state board of tax commissioners; for their expenses in enforcing the provisions of the "act to amend the tax law in relation to taxation of debts secured by mortgages," for services of employees, for printing, postage, expressage, stationery and other necessary expenses, ten thousand dollars (\$10,000), or so much thereof as may be necessary."

MISCELLANEOUS

Page 15. "For Doctor W. C. Phelps, for surgical services rendered at the Thomas orphan asylum on or about May, nineteen hundred and one, in amputating the arm of Laura M. Neisor, an employee of said institution, one hundred fifty dollars (\$150), said amount to be paid on the approval of the superintendent and audit of the comptroller."

"For the New York state commissioners of the Lewis and Clark centennial exposition in defraying the general expenses of said commission and for transportation of exhibits to Portland, Oregon, and return, and for such other expenses as may be required in the work of said commission including actual necessary and traveling and other contingent expenses incurred by the said commission, five thousand dollars (\$5,000), or so much thereof as may be necessary."

The above bill presented to me, containing several items for the appropriation of money, I hereby, pursuant to the provisions of section 9 of article four of the Constitution, object to the above mentioned items thereof, while approving the other portion of the bill. I do not approve said items, for the reason that the expenditures thereby authorized are in my judgment unnecessary or inexpedient at this time. I hereby append this statement to said bill at the time of signing it.

FRANK W. HIGGINS

**MEMORANDUM FILED WITH ASSEMBLY BILL
No. 2354 — MAKING AN APPROPRIATION FOR
CERTAIN EXPENSES OF GOVERNMENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 3, 1905

Memorandum filed with Assembly bill number 2354 (Introductory No. 1373), entitled "An act making appropriations for certain expenses of government and supplying deficiencies in former appropriations."

Statement of items of above entitled appropriation bill objected to and not approved by the Governor:

JUDICIARY (Libraries)

Page 7. "For the David L. Follett sixth judicial library, for the purchase of additional reports, catalogue and insurance, four hundred dollars (\$400), or so much thereof as may be necessary."

COMPTROLLER

Page 13. "For the comptroller, eighty-six dollars and fifty-five cents (\$86.55), or so much thereof as may be necessary, to reimburse the M. F. Wostergron company for taxes erroneously assessed and paid."

Page 14. "For the comptroller, seven hundred fifteen dollars and thirty-seven cents (\$715.37), or so much thereof as may be necessary, for the payment of services and disbursements in full rendered by Frederick G. Mather in preparation of papers in connection with the war of eighteen hundred and twelve."

THE ATTORNEY GENERAL

Page 21. "For additional salary of assistant from April first to September thirtieth, one hundred dollars (\$100)."

"Second grade: One employee for salary from April first to September thirtieth, two hundred ten dollars (\$210)."

"For Joseph G. Dudley, for legal services in connection with the investigation in the matter of the German Bank of Buffalo, five hundred dollars (\$500)."

Page 22. "For Martin McHale, for expert services rendered in the matter of the litigation of the state of New York with the Consolidated gas company, five hundred dollars (\$500), or so much thereof as may be necessary."

"For expenses and disbursements of the deputy attorney general having charge of actions and proceedings in the court of claims while in the discharge of his duties, in lieu of and in full of such expenses from and including the first day of January, nineteen hundred five, to and including September thirtieth, nineteen hundred six, one thousand seven hundred fifty dollars. (\$1,750), payable monthly."

STATE ENGINEER AND SURVEYOR

Page 22. "For the state engineer and surveyor for the purpose of continuing to cooperate with the United States geological survey in surveying and mapping the state of New York in the manner defined by chapter two hundred nineteen, laws of eighteen hundred ninety-eight, twenty thousand dollars (\$20,000), or so much thereof as may be necessary."

Page 23. "For the reimbursement of the town of Irondequoit, Monroe county, for the expense heretofore charged upon said town for the reconstruction of the improvement of Hudson avenue in said town during the year nineteen hundred two, under chapter one hundred fifteen, laws of eighteen hun-

dred ninety-eight, one thousand nine hundred five dollars and ninety-four cents (\$1,905.94), or so much thereof as may be necessary."

"For the state engineer and surveyor for cooperation with the United States geological survey in hydrographic work connected with the measurements of volume of streams and flow of water in the state of New York, for the purpose of determining the water supply available for canals and for potable and domestic uses and the development of water power, fifteen hundred dollars (\$1,500) or so much thereof as may be necessary."

Page 24. "For the state engineer and surveyor for traveling expenses and disbursements incurred in making examinations, surveys and maps for restoring and placing monuments on the boundary lines of the state and for expenses incurred for labor and material in procuring and placing such monuments pursuant to chapter four hundred twenty-one, laws of eighteen hundred eighty-seven, as amended by chapter six hundred seventy-eight, laws of eighteen hundred ninety-two, five thousand five hundred dollars (\$5,500), or so much thereof as may be necessary."

Page 26. "For O. C. Breed, for services performed and expenses incurred by him, in making investigations and obtaining evidence in respect to claims against the state on account of the Phoenix dam, two hundred seventy-four dollars and twenty-five cents (\$274.25), to be paid on the certificate of the state engineer and surveyor."

"For the state engineer and surveyor, for surveying and preparing plans and estimates of the work necessary to make the waters between Great South Bay and Shinnecock bay navigable for boats of six feet draft which plans and estimates shall be included in the next annual report of the state engineer

and surveyor to the Legislature, two thousand five hundred dollars (\$2,500), or so much thereof as may be necessary."

DEPARTMENT OF AGRICULTURE

Page-31. "For the commissioner of agriculture, for additional expenses on account of increased work made necessary by amendments to the agricultural law, five thousand dollars (\$5,000), or so much thereof as may be necessary."

FOREST, FISH AND GAME COMMISSION

Page 35. "For expenses of making surveys, witness, court, and attorney's fees in protecting the state's title and interest in state lands in the forest preserve, three thousand dollars (\$3,000), or so much thereof as may be necessary."

Page 37. "For the purpose of constructing a fishway in the Delaware river over the Deposit electric company's dam, fifteen hundred dollars (\$1,500), or so much thereof as may be necessary, said fishway to be constructed under plans prepared and approved by the state engineer and surveyor, and under his supervision."

"For the construction of a fishway in the Chenango river over the dam at or near the village of Port Dickinson, said fishway to be constructed under the direction and supervision of the forest, fish and game commissioner, one thousand two hundred dollars (\$1,200), or so much thereof as may be necessary."

"For the purpose of enabling the forest, fish and game commission of the state to establish a trout hatchery in the town of Ellington, in the county of Chautauqua, if the construction and establishment thereof is by said commission deemed advisable, the sum of five thousand dollars (\$5,000), or so much thereof as may be necessary."

DEPARTMENT OF HEALTH

Page 38, lines 7 and 8, "and for special equipment and expenses, three thousand dollars (\$3,000)."

"For use in connection with epidemics of smallpox and other contagious or infectious diseases in the several municipalities of the state, five thousand dollars (\$5,000), or so much thereof as may be necessary."

DEPARTMENT OF LABOR

Page 39. "For the salary of expert examiner of machinery from January twenty-fifth to June first, 1905, four hundred twenty dollars (\$420) for services to said June first, from and after which date said office is hereby abolished."

NATIONAL GUARD

Page 44. "For the payment of the paving tax heretofore levied by the village of Oneonta, for the paving of Fairview and Academy streets in front of the state armory, nine hundred twenty-five dollars (\$925), or so much thereof as may be necessary, to be paid upon the audit of the armory commission."

NIAGARA RESERVATION

Page 44. "The sum of seven hundred forty-six dollars and seventy-four cents (re. \$746.74), or so much thereof as may be necessary, being the unexpended balances of appropriations made in nineteen hundred three, for the survey of road to Lake Ontario and for alteration to inclined railway building, is hereby reappropriated for the purchase of labor saving machinery for the state reservation at Niagara."

DEPARTMENT OF PUBLIC BUILDINGS

Page 48. "For fitting up the rooms on the fourth floor of the capitol formerly used by the superintendent of the Adiron-

dack survey, known as numbers four hundred forty-two and four hundred forty-three, with heating, lighting, plumbing and other office facilities, fixtures and appurtenances, in the discretion of the superintendent of public buildings, three thousand dollars (\$3,000), or so much thereof as may be necessary."

DEPARTMENT OF PUBLIC WORKS

Page 51. "For the construction of a dike or dikes along the banks of the Beaverkill and Delaware river, at a point opposite the juncture of such streams with the east branch of the Delaware river, in the town of Hancock, county of Delaware, of such nature and for such a distance as to prevent the overflow of lands and the consequent damage to property in such town and the threatened injury to the health of the inhabitants thereof, and the removal of obstructions from such streams at or near such point, eight thousand dollars (\$8,000), or so much thereof as may be necessary. The work of such construction shall be done by the superintendent of public works, or under his direction and control, in accordance with plans, specifications and estimates to be prepared by the state engineer and surveyor. No part of such money shall be available for the purposes specified, until the owners of the lands upon which such dike or dikes are to be built shall have filed with the superintendent of public works, an instrument in writing, granting to the state the right to erect and forever maintain such dike or dikes, and releasing the state from all damages which may have accrued up to the date of the execution thereof by reason of the overflow of such lands; and nothing herein shall be construed as a recognition or assumption of any liability on the part of the state for any damages done by the overflow of such rivers."

Page 52. "For abating the nuisance caused by the Chemung canal and for that purpose to drain and clean out Catherine creek at Pine valley and Millport in the town of Veteran, Chemung county, three thousand dollars (\$3,000), or so much thereof as may be necessary."

"For the repair of the state dam on the Grasse river and the improvement of the stream, six thousand dollars (\$6,000), or so much thereof as may be necessary."

"For widening the embankment and raising portions of the roadway in Chautauqua county, leading from the Chautauqua Indian reservation to the village of Irving, sufficient to make said roadway secure against floods, five thousand dollars (\$5,000), or so much thereof as may be necessary."

"For rebuilding the dam across the Great Chazy river at Chazy lake, authorized by chapter two hundred eighty-nine, laws of eighteen hundred sixty-eight, five thousand dollars (\$5,000), or so much thereof as may be necessary."

Page 53. "For cleaning out, deepening and improving the channels of the creeks, water courses and state ditches and their tributaries, located in the north part of the town of Amherst, and in the town of Clarence, Erie county, that flow and drain into Tonawanda and Ellicott creeks in said town, and include Black creek from Wolcottsburg in the town of Clarence to where it empties into Ransom creek in the town of Amherst, and to put in order and repair the said ditches which were constructed between said Tonawanda and Ellicott creeks in said town of Amherst in order to drain the lands and highways in the towns aforesaid, and which are overflowed by back water occasioned by the erection of a state dam for canal purposes, five thousand dollars (\$5,000), or so much thereof as may be necessary."

"For the construction of an aqueduct with steel or timber trunk in place of the present double arch culvert for the passage of the waters of Oneida creek under the Erie canal at Durhamville, on the line between the counties of Madison and Oneida, according to plans and specifications therefor to be prepared by the state engineer and surveyor, sixty thousand dollars (\$60,000), or so much thereof as may be necessary, to be paid by the state treasurer, upon the warrant of the comptroller to the order of the superintendent of public works; no part of said money shall be available except for necessary advertising, engineering, surveys and the necessary plans until a contract or contracts in due form shall have been entered into between the state and some responsible person, firm or corporations for the completion of said work at a cost within the amount hereby appropriated; the above sum of sixty thousand dollars shall be refunded to the general fund by the canal fund from the appropriation made by chapter one hundred forty-seven, laws of nineteen hundred three, as soon as said appropriation shall become available, and the amount so refunded shall become a part of the general fund."

Page 54. "For repairs to the public highway in the town of Fowler, Saint Lawrence county, along and near the Oswegatchie river in said town, two thousand dollars (\$2,000), or so much thereof as may be necessary."

"For the construction of a breakwater in the Black river in the town of Crogan, Lewis county, at a point about two and one half miles east of the village of Carthage, for the protection of the so-called river road, and for the erection of a suitable guard rail along said road, and for repairing damage to said road resulting from the wash from said Black river, three thousand dollars (\$3,000), or so much thereof as may be necessary."

"For lamps, and the care and maintenance of same, for lighting the east shore of Cayuga lake, between the high and low water mark on the easterly end of Long point and on the westerly end of Lake Ridge point, and for a new lamp in the lighthouse at Cayuga on said lake, two hundred ten dollars (\$210), or so much thereof as may be necessary."

Page 55. "For the purpose of making a cut-off at the junction of the abandoned Chenango canal with Baldwin's creek in the village of Oxford, Chenango county, and restoring to its original channel the waters of said Baldwin's creek and conducting the same for a distance of about sixteen rods into the Chenango river and constructing a culvert in connection with said work, upon plans and specifications to be prepared by the state engineer and surveyor, four thousand dollars (\$4,000), or so much thereof as may be necessary."

"For cleaning out and improving the state dam erected pursuant to chapter six hundred twenty-one, laws of eighteen hundred ninety-eight, at the junction of the streams known as the Basha's kill and the Pine kill, in the town of Mamakating, Sullivan county, and in improving the channel of the Basha's kill at said junction, five hundred dollars (\$500), or so much thereof as may be necessary."

Page 56. "For the purpose of removing dead and floating timber and cleaning and rendering safe Saranac lake and Oseetah lake between the state dam and Lake Flower, township twenty-four, Franklin county, fifteen thousand (\$15,000), or so much thereof as may be necessary."

QUARANTINE

Page 57. "For the commissioners of quarantine, for deficiency in appropriation for care and maintenance, because of necessary repairs at Swinburne and Hoffman islands, two

thousand five hundred dollars (\$2,500), or so much thereof as may be necessary."

"For repairs to steamers of the health officer of the port of New York, which expense was necessarily incurred and paid on account of an emergency arising duly certified by the health officer of the port of New York and approved by the governor, attorney-general and comptroller, under the provisions of section eighty-three of the public health law, two thousand four hundred seven dollars (\$2,407), or so much thereof as may be necessary."

"For the payment of the following expenses of the health officer of the port of New York namely:

"For plumbing office, laboratory and houses, six hundred forty-four dollars and sixty-nine cents (\$644.69)."

Page 58. "For mason work for office, laboratory and houses, four hundred ninety-seven dollars and eighty-five cents (\$497.85)."

"For new heating apparatus for houses of deputy health officers, four hundred eighty-five dollars and fifty cents (\$485.50)."

"For gas apparatus for the supply of illuminating gas for department, fifteen hundred and eighty-eight dollars and eighty cents (\$1,588.80)."

MISCELLANEOUS

Page 69. "For the salary classification commission, for necessary disbursement of railway and hotel expenses, clerical and stenographer's services, six hundred dollars (\$600), or so much thereof as may be necessary, payable by the treasurer upon the warrant of the comptroller upon verified itemized accounts certified by the president of said commission, as re-

quired from time to time for services rendered or disbursements incurred."

Page 71. "To establish and equip a good roads school in the college of agriculture at Cornell university, and to provide for the instruction therein of highway commissioners, overseers of highways or other officers and persons in charge of the roads of the state, in the science of road making, ten thousand dollars (\$10,000), or so much thereof as may be necessary."

Page 72. "For the river improvement commission, appointed under chapter seven hundred thirty-four, laws of nineteen hundred four, fifteen thousand dollars (\$15,000), or so much thereof as may be necessary."

"For the board of port wardens of the port of New York, for services in assisting the board of alienists, appointed under chapter three hundred twenty-six, laws of nineteen hundred four, in the manner provided in said act, nine thousand dollars (\$9,000), said port wardens to be paid out of said amount one thousand dollars each."

LEGISLATURE

Page 10. "For the clerks of the senate and assembly, for the use of the senate and assembly, for file boards, index clerk's books, committee books, stationery, printing, for revising the clerk's manual and books, and necessary law books for the use of the senate and assembly committees, as shall be authorized by the resolution of either house, fourteen thousand dollars (\$14,000), or so much thereof as may be necessary."

The above bill presented to me containing several items for the appropriation of money, I hereby, pursuant to the provisions of section 9 of article four of the Constitution, object to the above mentioned items thereof while approving the other portion of the bill. I do not approve such items, for

the reason that the expenditures thereby authorized are in my judgment unnecessary or inexpedient at this time. I hereby append this statement to said bill at the time of signing it."

FRANK W. HIGGINS

**MEMORANDUM FILED WITH ASSEMBLY BILL
No. 2272 — MAKING APPROPRIATIONS FOR
THE SUPPORT OF GOVERNMENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 3, 1905.

Memorandum filed with Assembly bill number 2272 (Introductory No. 419), entitled "An Act making appropriations for the support of government."

Statement of item of above entitled appropriation bill objected to and not approved by the Governor.

LUNACY COMMISSION

Page 78. "For the employment of clergymen at the Willard state hospital, one thousand dollars (\$1,000), or so much thereof as may be necessary, to be paid under the direction of the state commission in lunacy."

The employment of clergymen at all the state hospitals is provided for out of the maintenance fund. There is no reason why one hospital should be specifically mentioned to the exclusion of all others in this regard.

FRANK W. HIGGINS

**MEMORANDUM ON BILLS NOT ACCEPTED BY
THE MAYORS OF CITIES****STATE OF NEW YORK****EXECUTIVE CHAMBER**

Albany, June 4, 1905

The following bills are not approved for the reason that they were not accepted by the mayors of the cities to which they relate :

- S.-A. 1677. Boats and barges, excursion, fire protection.
- S. 1328. Buffalo, charter, police department.
- S.-A. 2317. Civil Service Law, veterans.
 - A. 1945. Code of civil procedure, dispossess proceedings, service of precept.
 - A. 1956. New York city court, additional stenographers.
 - A. 1345. Hudson, city charter, removal of poles and wires from certain streets.
 - S. 1299. Ogdensburg, city charter, street openings.
 - A. 846. Olean, city charter, commitments to Erie county penitentiary.
 - A. 2164. Oswego, city charter, recorder.
 - A. 946. Rapid transit act, presentation of claims.
 - S. 1231. Rochester, Brighton enrollments, etc.
 - S. 1349. Schenectady, pest house.
 - A. 257. Geneva, city street improvements, money for sewer extension.
 - A. 2216. Leng, Mary, property damaged.
 - A. 2288. Taxes and assessments, to legalize.
 - S. 876. Mount Vernon, relief of Young Men's Christian Association.

FRANK W. HIGGINS

**MEMORANDUM ON NEW YORK CITY BILLS NOT
APPROVED — NOT ACCEPTED BY THE CITY**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 4, 1905

The following bills are not approved for the reason that they were not accepted by the city of New York:

New York City.

- A. 77. Brown, Manheim, Claim.
- A.-S. 1295. Charter, retirement fund.
- A. 2351. Persons habitually intoxicated.
- A. 232. Duggan, William H., patrolman.
- A. 348. Brooklyn, firemen, to confirm appointment of.
- A. 439. Charter, municipal court attendants.
- A. 569. Taylor, Richard, claim.
- A. 622. Campbell, Thomas F., patrolman.
- A. 1996. Charter, powers of fire commissioner.
- A. 1577. East River parks, refund of assessments.
- A. 1943. Municipal court act, dispossess proceedings, service of precept.
- A. 2330. Fire department employees, appointment to uniformed force.
- A. 1609. Charter, street cleaning department.
- A. 1706. McGowan, Elizabeth, refund taxes.
- A. 2038. Richmond, unpaid taxes and tax sales.
- A. 1815. Charter, appointment of patrolmen.
- A. 2224. Public hospital.
- S. 1336. Bronx, St. Paul's Reformed Episcopal church.
- A. 2245. Charter, commissioners in condemnation proceedings.

- A. 2319. Charter, police clerks.
- S. 500. McGee, John C., policeman.
- S. 1089. Brooklyn, release city interest in lands.
- S. 1484. Bronx, change of grade in 23d and 24th wards,
damage claims.
- S. 691. Bronx, Pelham avenue, laying out.
- S.-A. 2155. Mahon, Catherine F., pension.
- S. 1064. Charter, height of buildings.
- S. 1066. Waterbury, Nelson J., claim, retaxation of.
- S. 1282. Refund of assessments paid under L. 1896,
Ch. 57.
- S. 1369. Stables near churches and hospitals.
- S. 1503. Brooklyn, buildings and improvements.

FRANK W. HIGGINS

OMNIBUS VETO

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 4, 1905

The following bills are not approved because of being unconstitutional, defectively drafted, duplicates, special laws where relief can be had under existing law, or generally objectionable by reason of proposed changes:

Senate bill, Int. No. 80, printed No. 1472, introduced by Mr. Frawley, entitled "An Act to amend section four hundred and fifty-eight of the penal code, relating to crimes against the public peace."

Assembly bill, Int. No. 383, printed No. 416, introduced by Mr. Hastings, entitled "An Act to amend the penal code, relating to the unauthorized wearing of badges."

Assembly bill, Int. No. 562, printed No. 1769 (Senate re-print No. 1477), introduced by Mr. Malloy, entitled "An Act to amend the penal code, relative to life saving crews on ferry boats and excursion boats."

Senate bill, Int. No. 208, printed No. 948, introduced by Mr. Fitzgerald, entitled "An Act to amend section six hundred and fifty-seven of the code of civil procedure."

Senate bill, Int. No. 194, printed No. 996, introduced by Mr. Fitzgerald, entitled "An Act to amend section fourteen hundred and eighteen of the code of civil procedure."

Senate bill, Int. No. 629, printed No. 1020, introduced by Mr. Armstrong, entitled "An Act to amend section two hundred and twenty of the code of civil procedure relative to the designation of justices of the appellate division, and the times when such designations shall take effect."

Senate bill, Int. No. 707, printed No. 1306, introduced by Mr. Tully, entitled "An Act to amend the code of civil procedure in relation to accountants."

Senate bill, Int. No. 453, printed No. 1469, introduced by Mr. Cooper, entitled "An Act to amend section three hundred and fifty-nine of the code of civil procedure, relative to stenographer for county court of Kings county."

Assembly bill, Int. No. 647, printed No. 727, introduced by Mr. Wedemeyer, entitled "An Act to amend the code of civil procedure relative to exemptions of jurors from service."

Assembly bill, Int. No. 703, printed No. 790, introduced by Mr. G. F. Thompson, entitled "An Act to amend the code of civil procedure relative to the power and jurisdiction of justices of the peace in certain instances."

Assembly bill, Int. No. 701, printed No. 1120 (Senate re-print No. 1058), introduced by Mr. G. F. Thompson, entitled

"An Act to amend the code of civil procedure, in relation to the meaning of the term justice of the peace."

Assembly bill, Int. No. 700, printed No. 1150 (Senate re-print No. 1057), introduced by Mr. G. F. Thompson, entitled "An Act to amend the code of civil procedure, in relation to jurisdiction of justices of the peace."

Assembly bill, Int. No. 516, printed No. 1466, introduced by Mr. Merritt, entitled "An Act to amend the code of civil procedure, in relation to the petition for voluntary dissolution of a corporation."

Assembly bill, Int. No. 1184, printed No. 2148, introduced by Mr. LaRue, entitled "An Act to amend the code of civil procedure, in relation to the sale, mortgaging or leasing of the contingent interest of infants not in being in real property."

Assembly bill, Int. No. 402, printed No. 2185, introduced by Mr. Hammond, entitled "An Act to amend the code of civil procedure, relative to the possession of property on giving security."

Senate bill, Int. No. 923, printed No. 1259, introduced by Mr. Lewis, entitled "An Act to amend section thirty-two of chapter six of the general laws in relation to the forms of registration at elections."

Assembly bill, Int. No. 407, printed No. 610, introduced by Mr. Lewis, entitled "An Act to amend the poor law, relating to the relief of soldiers, sailors and their families."

Assembly bill, Int. No. 1163, printed No. 2220, introduced by Mr. Wilson, entitled "An Act to amend the agricultural law, in relation to the prevention of disease in fruit trees, and the pests that infest the same."

Senate bill, Int. No. 355, printed No. 1269, introduced by Mr. Ambler, entitled "An Act to amend sections four, fifty-

three, eighty-one and one hundred and fourteen of the agricultural law, entitled 'An Act in relation to agriculture constituting articles one, two, three, four and five of chapter thirty-three of the general laws.'"

Assembly bill, Int. No. 472, printed No. 1398, introduced by Mr. Wade, entitled "An act to amend chapter four hundred and sixty-two of the laws of eighteen hundred and ninety-nine, entitled 'An Act to amend the poor law, in relation to relief of soldiers by Grand Army posts,' in relation to relief of soldiers."

Senate bill, Int. No. 475, printed No. 1013, introduced by the Committee on Taxation and Retrenchment, entitled "An Act to amend the tax law in relation to the taxation of debts secured by mortgages."

Assembly bill, Int. No. 605, printed No. 1353, introduced by Mr. Merritt, entitled "An Act to amend section eighty-five of chapter five hundred sixty-eight of the laws of eighteen hundred and ninety, entitled 'An Act in relation to highways, constituting chapter nineteen of the general laws.'"

Assembly bill, Int. No. 606, printed No. 1847, introduced by Mr. West, entitled "An Act to amend the tax law, in relation to the notice of completion of assessment roll and grievance day."

Assembly bill, Int. No. 1558, printed No. 2281, introduced by Mr. Rigby, entitled "An Act to amend chapter five hundred and sixty-eight of the laws of eighteen hundred and ninety, known as the highway law, in relation to limitation upon laying out highways."

Senate bill, Int. No. 720, printed No. 904, introduced by Mr. Carpenter, entitled "An Act to amend the highway law, relative to private roads, and to repeal certain sections thereof."

Senate bill, Int. No. 908, printed No. 1242, introduced by Mr. Ambler, entitled "An Act to amend section eighty-eight of chapter five hundred and sixty-eight of the laws of eighteen hundred and ninety, entitled 'An Act in relation to highways, constituting chapter nineteen of the general laws as amended by chapter three hundred and thirty-four of the laws of eighteen hundred and ninety-four.'"

Assembly bill, Int. No. 428, printed No. 1046, introduced by Mr. F. C. Wood, entitled "An act to amend the forest, fish and game law, in relation to the compensation of game protectors."

Assembly bill, Int. No. 994, printed No. 1205, introduced by Mr. Miller, entitled "An Act to amend the forest, fish and game law in relation to the pollution of streams."

Senate bill, Int. No. 496, printed No. 576, introduced by Mr. Coggeshall, entitled "An Act to amend chapter twenty of the laws of nineteen hundred, entitled 'An Act for the protection of the forest, fish and game of the state, constituting chapter thirty-one of the general laws.'"

Senate bill, Int. No. 383, printed No. 545 (Assembly reprint No. 1959), introduced by Mr. Lewis, entitled "An Act to amend the banking law relative to trust companies."

Assembly bill, Int. No. 1317, printed No. 1746, introduced by Mr. Fish, entitled "An Act to amend the stock corporation law in relation to the power to borrow money and mortgage property."

Senate bill, Int. No. 389, printed No. 431 (Assembly reprint No. 2310), introduced by Mr. Tully, entitled "An Act to amend the banking law in relation to profits and losses of co-operative savings and loan associations."

Assembly bill, Int. No. 547, printed No. 2093, introduced by Mr. Plank, entitled "An Act to amend the banking law,

relative to security for loans made by co-operative savings and loan associations."

Senate bill, Int. No. 924, printed No. 1260, introduced by Mr. Cobb, entitled "An Act to amend the membership corporation law, relative to soldiers' monument corporations."

Assembly bill, Int. No. 1140, printed No. 1427, introduced by Mr. Coutant, entitled "An Act to amend an act, entitled 'An Act to fix the salary of the town clerk and commissioner of highways in the town of Saugerties, Ulster county.'"

Assembly bill, Int. No. 510, printed No. 2195, introduced by Mr. Hapeman, entitled "An Act to provide for clearing out the obstructions from the outlet of Parker's pond in the town of Cato, county of Cayuga, and for paying the cost thereof."

Assembly bill, Int. No. 357, printed No. 2270, introduced by Mr. Shuttleworth, entitled "An Act to provide for the better collection of unpaid assessments for local improvements in the town of West Seneca, Erie county, New York."

Senate bill, Int. No. 968, printed No. 1361, introduced by Mr. Brown, entitled "An Act to amend chapter forty-seven of the laws of eighteen hundred and ninety-one, entitled 'An Act to make the office of county clerk of Herkimer county a salaried office and regulating the management of said office, relating to the power and authority of special deputies.'"

Assembly bill, Int. No. 1541, printed No. 2238, introduced by Mr. Waddell, entitled "An Act to legalize and confirm the proceedings of the board of education and legal voters of union free school district number one of the towns of Luzerne, Warren county, and Hadley, Saratoga county, relative to the levy of a tax payable in installments, and the issuance and sale of certain school bonds of said district, for the

purchase of a school house site and erection of a building thereon."

Senate bill, Int. No. 320, printed No. 344, introduced by Mr. Stevens, entitled "An Act to amend chapter two hundred and sixty of the laws of nineteen hundred and three, entitled 'An Act to make the office of sheriff of Livingston county a salaried one in part, and to regulate the management thereof,' in relation to compensation of under sheriff, jailer and attendants."

Assembly bill, Int. No. 1504, printed No. 2166, introduced by Mr. Pratt, entitled "An Act to legalize and confirm the action of a majority of the electors of the town of New Hartford, Oneida county, at the last biennial town meeting in said town, on November third, nineteen hundred and three, in relation to paying fifteen per centum of the cost of improving the Bridgewater turnpike as a town charge."

Assembly bill, Int. No. 1523, printed No. 2193, introduced by Mr. G. H. Whitney, entitled "An Act to amend chapter five hundred and six of the laws of nineteen hundred and two, entitled 'An Act to amend the charter of the village of Saratoga Springs, and to provide for the appointment of sewer, water and street commissioners for said village, and to prescribe their powers and duties.'"

Assembly bill, Int. No. 1512, printed No. 2178, introduced by Mr. Hooker, entitled "An Act authorizing the board of supervisors of the county of Genesee to make an annual appropriation to corporations for the prevention of cruelty."

Assembly bill, Int. No. 1064, printed No. 1919, introduced by Mr. Wade, entitled "An Act to amend the consolidated school law, relative to the alteration of school districts having a bonded indebtedness."

Assembly bill, Int. No. 1532, printed No. 2212, introduced by Mr. Hapeman, entitled "An Act to amend section one of title sixteen, chapter eight, part three of the revised statutes, relative to the drainage of low lands.

Senate bill, Int. No. 339, printed No. 759, introduced by Mr. Raines, entitled "An Act to amend the state charities law, in relation to the state custodial asylum for feeble-minded women at Newark."

Assembly bill, Int. No. 641, printed No. 721, introduced by Mr. Moreland, entitled "An Act to amend the revised statutes relative to the parole of prisoners."

Assembly bill, Int. No. 740, printed No. 839, introduced by Mr. Tompkins, entitled "An Act to amend the insurance law in relation to the incorporation of fraternal beneficiary societies, orders or associations."

Assembly bill, Int. No. 804, printed No. 933, introduced by Mr. Santee, entitled "An Act to amend the benevolent orders law, relative to power of trustees to issue bonds."

Assembly bill, Int. No. 577, printed No. 1755, introduced by Mr. Maier, entitled "An Act to amend the village law, in relation to the powers of the board of trustees as fence viewers."

Assembly bill, Int. No. 741, printed No. 1789, introduced by Mr. Wainwright, entitled "An Act to amend the state finance law, in relation to receipts and expenditures."

Assembly bill, Int. No. 386, printed No. 1848 (Senate reprint No. 1512), introduced by Mr. Murphy, entitled "An Act to amend the civil service law, relating to the qualification of applicants for civil service examinations."

Senate bill, Int. No. 855, printed No. 1471, introduced by Mr. Carpenter, entitled "An Act to revise and consolidate

the charter of the village of Ossining, and to extend the boundaries of said village."

Assembly bill, Int. No. 300, printed No. 858, introduced by Mr. Patton, entitled "An Act authorizing the village of Kenmore to levy a frontage tax for water purposes."

Assembly bill, Int. No. 470, printed No. 1067 (Senate reprint No. 1135), introduced by Mr. G. H. Whitney, entitled "An Act to provide for the acquirement and abolition of toll roads and toll bridges."

Senate bill, Int. No. 853, printed No. 1137, introduced by Mr. Page, entitled "An Act relating to the property of extinct or disbanded Congregational churches and societies."

Senate bill, Int. No. 913, printed No. 1394, introduced by Mr. Davis, entitled "An Act to amend chapter one hundred and forty-seven of the laws of nineteen hundred and three, entitled 'An Act making provision for issuing bonds to the amount of not to exceed one hundred and one million dollars for the improvement of the Erie canal, the Oswego canal and the Champlain canal, and providing for a submission of the same to the people to be voted upon at the general election to be held in the year nineteen hundred and three,' in relation to locks and channel."

Assembly bill, Int. No. 390, printed No. 1256, introduced by Mr. Tompkins, entitled "An Act to legalize and validate the official acts of notaries public."

Assembly bill, Int. No. 1417, printed No. 1953, introduced by Mr. E. E. Charles, entitled "An Act to legalize the acts of Lyman C. Broughton, a coroner of the county of Wyoming, and to permit him to file his oath of office."

Assembly bill, Int. No. 1067, printed No. 1971, introduced by Mr. Freidel, entitled "An Act to incorporate the Hebrew free loan association."

Assembly bill, Int. No. 1022, printed No. 2090, introduced by Mr. Fish, entitled "An Act to encourage the formation of companies to supply Pasteurized or clarified milk and cream and pure dairy products and to exempt the same from the provisions of section one and two of chapter two hundred and ninety of the laws of eighteen hundred and ninety-nine, and section seven of the stock corporation law."

Assembly bill, Int. No. 1521, printed No. 2191, introduced by Mr. Fitzsimons, entitled "An Act to change the name of the Sacred Heart academy to Clason Point military academy."

Senate bill, Int. No. 1000, printed No. 1463, introduced by Mr. Cobb, entitled "An Act to legalize the acts of James C. McCormick."

Assembly bill, Int. No. 1404, printed No. 1933, introduced by Mr. Merritt, entitled "An Act to legalize the acts of William McCormick, a justice of the peace of the town of Potsdam, county of Saint Lawrence."

Senate bill, Int. No. 425, printed No. 1146 (Assembly reprint No. 2318), introduced by Mr. Carpenter, entitled "An Act to amend the village law, in relation to the borrowing of money for certain purposes."

Assembly bill, Int. No. 368, printed No. 368, introduced by Mr. Maier, entitled "An Act to provide for the repairing of the Montezuma turnpike across Montezuma marsh, and making an appropriation therefor."

Senate bill, Int. No. 98, printed No. 98, introduced by Mr. Prime, entitled "An Act making an appropriation for continuing the restocking of the Adirondack region with wild moose."

Senate bill, Int. No. 287, printed No. 307, introduced by Mr. Hill, entitled "An Act to facilitate state commerce by increas-

ing the depth of water in the Erie basin at Buffalo, and making an appropriation therefor."

Assembly bill, Int. No. 1540, printed No. 2237, introduced by Mr. Bisland, entitled "An Act making an appropriation to the state engineer for preparing surveys and estimates of the probable expense for constructing dikes and barriers along the Delaware river in the town of Cohecton in the county of Sullivan."

Senate bill, Int. No. 849, printed No. 1127, introduced by Mr. Prime, entitled "An Act providing for clearing out the channel between upper and lower Chateaugay lakes in the county of Clinton, and making an appropriation therefor."

Assembly bill, Int. No. 460, printed No. 490 (Senate reprint No. 1292), introduced by Mr. F. C. Wood, entitled "An Act to provide for the appointment of a commission to investigate the matter of disputed title to lands claimed by the state in counties containing portions of the forest preserve."

Senate bill, Int. No. 621, printed No. 1112 (Assembly reprint No. 2221), introduced by Mr. Ambler, entitled "An Act to legalize, ratify and confirm the action of the town board of the town of Stockport in the county of Columbia, compromising and settling certain claims of James A. Haynes against said town and certain litigation with reference thereto."

Assembly bill, Int. No. 421, printed No. 961, introduced by Mr. Beihlf, entitled "An Act to amend the code of civil procedure, relative to the power of a court respecting the docket of its judgments."

Assembly bill, Int. No. 915, printed No. 1354, introduced by Mr. Hammond, entitled "An Act in relation to certain assessments for local improvements in the city of Syracuse."

Assembly bill, Int. No. 1225, printed No. 1542 (Senate re-

print No. 1314), introduced by Mr. Hammond, entitled "An Act to supplement the provisions of law, relating to the department of assessment and taxation of the city of Syracuse."

Assembly bill, Int. No. 1405, printed No. 2128, introduced by Mr. Steele, entitled "An Act providing for the payment of certain notes and indebtedness of the town of Frankfort, county of Herkimer, and authorizing the issue of town bonds for such purposes."

Senate bill, Int. No. 844, printed No. 1122, introduced by Mr. Cooper, entitled "An Act to repeal chapter six hundred and twenty-nine of the laws of eighteen hundred and ninety-six, entitled 'An Act to close and strike from the town survey map of Kings county all that portion of East Ninety-second street, lying between Avenue L and Avenue N, as the same is laid down on said map.'"

Senate bill, Int. No. 82, printed No. 1329, introduced by Mr. Drescher, entitled "An Act to amend the forest, fish and game law by providing for the appointment of game protectors for Jamaica bay and adjacent waters on Long Island and making an appropriation therefor."

Assembly bill, Int. No. 1537, printed No. 2217, introduced by Mr. Wainwright, entitled "An Act to provide for the participation of the state of New York in the Jamestown tercentennial exposition, to be held on and near the waters of Hampton Roads, in the state of Virginia, in the year nineteen hundred and seven, and making an appropriation therefor."

Senate bill, Int. No. 70, printed No. 279, (Assembly reprint No. 2312), introduced by Mr. Lewis entitled "An Act to amend section twenty-nine of chapter four hundred and sixty-six of the laws of eighteen hundred and seventy-seven, entitled 'An Act in relation to assignments of the estates of debtors for the benefit of creditors.'"

Assembly bill, Int. No. 582, printed No. 649, introduced by Mr. Nugent, entitled "An Act to enable the commissioner of water supply, gas and electricity of the city of New York, to rehear and determine the charge against Adolph S. Wydler, formerly a clerk in the department of water supply, gas and electricity of said city, and to reinstate him in said department."

Assembly bill, Int. No. 1530, printed No. 2210, introduced by Mr. Wagner, entitled "An Act authorizing the board of estimate and apportionment of the city of New York to audit and allow and the comptroller of said city to pay to Ernest H. Juergens compensation for services rendered to said city in the law department in the years eighteen hundred and ninety-nine and nineteen hundred as office boy."

Senate bill, Int. No. 342, printed No. 963, introduced by Mr. Cooper, entitled "An Act to amend an act, entitled 'An Act in relation to the municipal court of the city of New York, its officers and marshals, being chapter five hundred and eighty of the laws of nineteen hundred and two,' to authorize the formation of an appellate term in the second judicial department, to appoint clerks and attendants, and to provide for the expenses thereof."

Senate bill, Int. No. 876, printed No. 1177, introduced by Mr. Cobb, entitled "An Act to amend chapter three hundred and forty-seven of the laws of nineteen hundred and three, entitled 'An Act to provide for annual reports by cities of the second and third class of their financial condition,' in relation to compelling the making of such reports."

Assembly bill, Int. No. 847, printed No. 1337 (Senate reprint No. 1510), introduced by Mr. Sullivan, entitled "An Act to amend the Greater New York charter, relative to fire marshals."

Assembly bill, Int. No. 1525, printed No. 2205, introduced by Mr. McManus, entitled "An Act to provide an additional stenographer for the city court of the city of New York."

Senate bill, Int. No. 665, printed No. 1074, introduced by Mr. Elsberg, entitled "An Act to amend sections forty-three, forty-four, forty-seven and two hundred and forty-two of the Greater New York charter, with reference to the respective powers and duties of the board of estimate and apportionment and the board of aldermen."

Assembly bill, Int. No. 456, printed No. 1409, introduced by Mr. R. H. Smith, entitled "An Act authorizing the trustee of the fire department relief fund of the city of New York, to allow to Julia A. Murphy the pension to which she would have been entitled as widow of Lawrence Murphy had his death ensued as the immediate result of injuries received in the discharge of his duties."

Assembly bill, Int. No. 231, printed No. 231 (Senate reprint No. 1475), introduced by Mr. La Fetra, entitled "An Act to enable the police commissioner of the city of New York to rehear and determine the charges against Charles E. Savage, formerly a patrolman of the police department of said city, and to reinstate him in said department."

Assembly bill, Int. No. 75, printed No. 75, introduced by Mr. Young, entitled "An Act authorizing the board of estimate and apportionment of the city of New York to allow and authorizing and directing the comptroller of the said city to pay certain claims incurred for the maintenance of the municipal court of the city of New York, twelfth district, Manhattan borough, during the year nineteen hundred and three."

Assembly bill, Int. No. 594, printed No. 661, introduced by Mr. McKeown, entitled "An Act authorizing the audit and

allowance of the claim of Andrew P. Wernberg against the city of New York, for services rendered as inspector in the auditing bureau of the department of finance of the city of New York.

Assembly bill, Int. No. 66, printed No. 66, introduced by Mr. Stanley, entitled "An Act authorizing the police commissioner of the city of New York to appoint John W. Pinkley, an ex-policeman of the city of New York, who resigned from said police department, November twenty-four, eighteen hundred and ninety-seven."

Assembly bill, Int. No. 119, printed No. 119, introduced by Mr. Wedemeyer, entitled "An Act for the relief of Richard Davis, a volunteer fireman, for injuries received while a member of Richmond hook and ladder company number four, a volunteer fire company of the city of New York."

Assembly bill, Int. No. 162, printed No. 162, introduced by Mr. R. H. Smith, entitled "An Act to enable the police commissioner of the city of New York to re-hear and determine the charges against Richard Dillon, a policeman of the second grade, for reinstatement in said department."

Assembly bill, Int. No. 610, printed No. 676, introduced by Mr. A. E. Smith, entitled "An Act to authorize the payment of the claim of James A. Russell for services rendered the city of New York."

Assembly bill, Int. No. 628, printed No. 708 (Senate reprint No. 1400), introduced by Mr. Beihliff, entitled "An Act authorizing the board of estimate and apportionment of the city of New York to allow, and authorizing and directing the comptroller of the said city to pay, certain claims alleged to be due to certain dockmasters for services performed."

Assembly bill, Int. No. 828, printed No. 970 (Senate reprint No. 1085), introduced by Mr. McKeown, entitled "An Act to

amend the Greater New York charter, relating to the salary of the deputy chief of fire department in charge of the boroughs of Brooklyn and Queens."

Assembly bill, Int. No. 1333, printed No. 1783, introduced by Mr. Wedemeyer, entitled "An Act for the relief of the minor daughter of Joseph Parker, a volunteer fireman, whose death resulted from injuries received by him while in the actual performance of his duties, and while a member of Granite hook and ladder company number two, a volunteer fire company of the city of New York."

Assembly bill, Int. No. 1492, printed No. 2138, introduced by Mr. Prince, entitled "An Act enabling the board of embalming examiners of the state of New York to receive the application of Patrick J. Burke of the borough of Manhattan, city of New York, for a license to engage in the business of embalming."

Senate bill, Int. No. 25, printed No. 25, introduced by Mr. Martin, entitled "An Act authorizing the board of estimate and apportionment of the city of New York to audit and allow and also authorizing the comptroller of the city of New York to pay to Valentine M. Collins compensation for services actually rendered to the city of New York in the department of education in the years eighteen hundred and ninety-nine and nineteen hundred."

Senate bill, Int. No. 308, printed No. 334, introduced by Mr. Grady, entitled "An Act to amend the Greater New York charter, relative to powers of the board of estimate and apportionment."

Senate bill, Int. No. 504, printed No. 585, introduced by Mr. Kehoe, entitled "An Act to provide that the fire commissioner of the city of New York, in his discretion, may reappoint in the department Robert J. Sweeney, who resigned

from the department November fourth, nineteen hundred and two."

Senate bill, Int. No. 694, printed No. 847, introduced by Mr. Martin, entitled "An Act to amend subdivision seven of section twelve of the municipal court act of the city of New York relative to designation and rotation of judges."

Senate bill, Int. No. 804, printed No. 1038, introduced by Mr. Foley, entitled "An Act to amend section three hundred and seventy-four of the Greater New York charter, relative to the clerk of the board of justices of the municipal court."

Assembly bill, Int. No. 1321, printed No. 1772, introduced by Mr. Rigby, entitled "An Act to repeal section six of title ten of chapter four hundred and sixteen of the laws of eighteen hundred and ninety-three, entitled 'An Act in relation to the city court of Yonkers.'"

Assembly bill, Int. No. 1378, printed No. 1890, introduced by Mr. Santee, entitled "An Act to amend chapter forty of the laws of eighteen hundred and eighty-eight, entitled 'An Act to incorporate the city of Hornellsville,' relating to city elections and city officers."

Senate bill, Int. No. 991, printed No. 1450, introduced by Mr. Coggeshall, entitled "An Act to confirm and legalize certain taxes and assessments in the city of Utica."

FRANK W. HIGGINS

**DESIGNATION OF JUSTICE MORGAN J. O'BRIEN
AS PRESIDING JUSTICE OF THE APPELLATE
DIVISION, FIRST DEPARTMENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

In accordance with section two of article six of the Constitution and the statute in such case made and provided the

HONORABLE MORGAN J. O'BRIEN

of the city of New York, a Justice of the Supreme Court of the First Judicial District, is hereby designated as Presiding Justice of the Appellate Division of the Supreme Court in and for the First Judicial Department in the place of the Honorable Charles H. VanBrunt, deceased, for the term ending December 31, 1915.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fifth day
[L s] of June in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**PROCLAMATION CONVENING THE LEGISLA-
TURE IN EXTRAORDINARY SESSION**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Pursuant to the power vested in me by section 4 of article IV of the Constitution, I hereby convene the Legislature in Extraordinary Session at the Capitol in the city of Albany on Wednesday the twenty-first day of June, nineteen hundred and five, at noon.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this fifteenth
[L S] day of June in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MESSAGE RECOMMENDING CONSIDERATION
OF THE CONDUCT OF JUSTICE WARREN B.
HOOKER OF THE SUPREME COURT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 21, 1905.

TO THE LEGISLATURE:

Warren B. Hooker, one of the Justices of the Supreme Court of the State of New York, having requested a legislative inquiry as to his conduct, and the Assembly having re-

ferred the said request to its Committee on Judiciary, and testimony having been taken before said Committee and a report having been made by it;

And, upon the recommendation of said Committee contained in its said report, the Assembly having unanimously voted that proceedings be taken for the removal of said Warren B. Hooker from the said office of Justice of the Supreme Court, and having directed its Committee on Judiciary to formulate rules of practice and procedure in said matter, with a statement of the cause alleged for such removal and to report the same to the Assembly;

And the Legislature having adjourned, leaving said matter in abeyance;

And I, deeming the occasion an extraordinary one, having convened the Legislature in extraordinary session;

Now, THEREFORE, in accordance with the provisions of section 4 of article IV of the Constitution, I do hereby recommend for your consideration, at this extraordinary session, the conduct of said Warren B. Hooker, and the question of his removal from the office of Justice of the Supreme Court.

FRANK W. HIGGINS

APPOINTMENT OF AN EXTRAORDINARY SPECIAL TERM AT WATERLOO AND DESIGNATION OF JUSTICE DUNWELL THERETO

STATE OF NEW YORK

EXECUTIVE CHAMBER

It appearing to my satisfaction that public interest requires it;

THEREFORE, in accordance with the statute in such case made and provided, I do hereby appoint an Extraordinary Special Term of the Supreme Court to be held at the court house in the village of Waterloo and County of Seneca on Monday the tenth day of July next at ten o'clock in the forenoon of that day, and to continue so long as may be necessary for the disposal of the business which may be brought before it; and I do hereby designate the

HONORABLE JAMES W. DUNWELL,

of Lyons, who is a justice of the Supreme Court of the Seventh Judicial District to hold the said Extraordinary Special Term as hereinbefore described; and I do further direct that notice of such appointment be given by publication of this order once in the *Seneca County News* and the *Seneca County Courier-Journal*, newspapers published in Seneca County.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twenty-
[L s] ninth day of June in the year of our Lord one
thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MATTER OF FRANK F. HUFNAIL, COUNTY
CLERK OF MONTGOMERY COUNTY—OR-
DER OF REMOVAL FROM OFFICE AND
OPINION**

STATE OF NEW YORK

EXECUTIVE CHAMBER

In the matter of the charges preferred against Frank F. Hufnail as county clerk of the county of Montgomery

ORDER OF REMOVAL

Charges of misconduct and malfeasance in office having been heretofore preferred by the Amsterdam Bar Association against Frank F. Hufnail, the county clerk of the county of Montgomery, and a copy of said charges having been served on the said Hufnail, and an opportunity having been given him to be heard in his defense, and he having filed an answer denying any misconduct or neglect of duty, and an order having been made by appointing Clarence A. Farnum of Wells-ville, N. Y., commissioner to take the testimony and the examination of witnesses as to the truth of said charges, and to report to me, and also the material facts which he deems to be established by the evidence, and the said commissioner having taken the testimony relating to such charges, and his report bearing date June 1st, 1905, and the evidence taken by him having been duly filed, and it appearing to me after an examination of the same that said Frank F. Hufnail has been guilty of misconduct and malfeasance in office; it is therefore

ORDERED that said Frank F. Hufnail be, and he hereby is, removed from the office of county clerk of the county of Montgomery.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twelfth
[L s] day of July in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

OPINION

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, July 12, 1905.

In the matter of the charges preferred against Frank F. Hufnail as county clerk of the county of Montgomery.

OPINION

It appears from the evidence herein that Hufnail kept no proper record of the attendance of jurors at the courts of record of the county. His own statement is that "they would tell me how many days they had attended and how many miles they had traveled and I would pay them." The result was that many persons were paid by the county on his order sums of money as jurors' fees to which they were not entitled. It further appears that he paid board bills of jurymen and wit-

nesses without authority and that he paid persons as court attendants who did not attend the court. It appears that during the first year of this clerk's term the court expenses have become nearly double the amount of previous years.

It further appears by the evidence of the County Judge that after proceedings for the removal of Hufnail had been publicly discussed, Hufnail was guilty of such suspicious acts in connection with the drawing of a grand jury before which his case might come, that the County Judge felt obliged to rebuke him sharply and to insist that he place the box before him and draw the ballots therefrom one by one as the law requires. Among the first names drawn by the clerk were those of two of his bondsmen.

The inference is possible that Hufnail had no intent to defraud the county of Montgomery by reason of the improper payments made by him and it does not appear that he derived any pecuniary gain from the transactions. The learned commissioner before whom the evidence was taken was so impressed with this feature of the case, which was skillfully presented by Hufnail's counsel, that he reported to me as his opinion that Hufnail should not be removed because his misconduct was without criminal intent. The commissioner's duty was to report findings of facts merely. The responsibility is upon me to draw conclusions therefrom and from the evidence. The commissioner appears to have considered this proceeding as of a quasi-criminal nature. I do not so view it. County clerks should be competent as well as honest. A careless or inefficient clerk may be as harmful to the county as a dishonest one and should be removed as promptly. The office is of a highly responsible nature and its duties should be entrusted to those alone who have the ability as well as the disposition to safeguard the interests of the county.

The evidence clearly establishes misconduct on the part of the clerk and I am satisfied that the public welfare requires his removal.

FRANK W. HIGGINS

**MATTER OF WILLIAM O. DODDS, SHERIFF OF
MONTGOMERY COUNTY—ORDER OF RE-
MOVAL FROM OFFICE AND OPINION**

STATE OF NEW YORK

EXECUTIVE CHAMBER

In the matter of the charges preferred against William O. Dodds as sheriff of the county of Montgomery.

ORDER OF REMOVAL

Charges of misconduct and malfeasance in office having been heretofore preferred by the Amsterdam Bar Association against William O. Dodds, the sheriff of the county of Montgomery, and a copy of said charges having been served on the said Dodds, and an opportunity having been given him to be heard in his defense, and he having filed an answer denying any misconduct or neglect of duty, and an order having been made by me appointing Clarence A. Farnum of Wellsville, N. Y., commissioner to take the testimony and the examination of witnesses as to the truth of said charges, and to report the same to me, and also the material facts which he deems to be established by the evidence, and the said commissioner having taken the testimony relating to such charges, and his report bearing date June 1st, 1905, and the evidence taken by him

having been duly filed, and it appearing to me after an examination of the same that said William O. Dodds has been guilty of misconduct and malfeasance in office; it is therefore

ORDERED that said William O. Dodds be, and he hereby is, removed from the office of sheriff of the county of Montgomery.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twelfth
[L s] day of July in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

OPINION

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, July 12, 1905.

In the matter of the charges preferred against William O. Dodds as sheriff of the county of Montgomery.

OPINION

It appears by the evidence that William O. Dodds is now and, since January 1, 1904, has been the sheriff of Montgomery county; that the Board of Supervisors entered into a contract with said sheriff for the board of prisoners confined in the county jail for the year 1904, at the rate of \$1.75 per week

for each prisoner; that on November 18, 1904, Dodds presented his verified account for the board of prisoners under this contract from January 1, 1904, to October 31, 1904, to the Board of Supervisors that this account included false and fraudulent charges for board of prisoners to the extent of 4.059 days at 25 cents per day, amounting in the aggregate to \$1,014.75; and that Dodds illegally collected that amount from the county. This is the main charge against him, although other irregularities are alleged and proved.

Dodds had the assistance of able counsel on the hearing, and was given abundant opportunity to prepare and present his defense. The material facts are established without serious contradiction. The accused disclaims guilty knowledge and intentional misconduct, but on the evidence I am satisfied that he was cognizant of the fraud and an active participant therein.

Public servants must be held to strict accountability for the performance of their duties. Honesty and integrity are the first qualifications of those who represent the majesty of the law. Private morals are debauched when a public official tolerates law breaking by others and loots the public treasury himself. A sheriff who cannot be trusted to make out an honest account for the board of prisoners cannot be trusted with the responsibility of executing the laws in his county.

My power is limited to the removal of the sheriff from his office. The county of Montgomery has a further duty to perform, and it is to be hoped that its officials will act with promptness and firmness.

FRANK W. HIGGINS

**MESSAGE RECOMMENDING AN APPROPRIATION
FOR EXPENSES OF EXTRAORDINARY SES-
SION**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, July 20, 1905

TO THE LEGISLATURE:

I recommend for your consideration at this extraordinary session of the Legislature an appropriation sufficient to pay in full the expenses thereof.

FRANK W. HIGGINS

**CERTIFICATION OF THE NECESSITY FOR THE
PASSAGE OF SENATE BILL (INTRODUCTORY
NO. 1)—MAKING AN APPROPRIATION FOR
THE EXPENSES OF THE EXTRAORDINARY
SESSION.**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE LEGISLATURE:

- It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the provisions of section fifteen of article three of the constitution, and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Senate bill (Intro-

ductory No. 1), entitled "An act making an appropriation for the expenses of the extraordinary session of the Legislature called by proclamation of the Governor to convene on June twenty-first, nineteen hundred and five."

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twentieth
[L. s.] day of July in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MESSAGE RECOMMENDING CONSIDERATION
OF THE QUESTION OF THE APPOINTMENT
OF A JOINT COMMITTEE OF THE SENATE
AND ASSEMBLY TO INVESTIGATE THE
OPERATIONS OF LIFE INSURANCE COM-
PANIES DOING BUSINESS IN THE STATE**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, N. Y., July 20, 1905

TO THE LEGISLATURE:

I was led to convene the Legislature in this Extraordinary session by reason of an extraordinary condition existing at the close of the regular session. A Justice of the Supreme Court stood accused by the Judiciary Committee of the Assembly of unfitness to remain on the bench. No other provision could be made for the speedy constitutional determination of

the question whether cause existed for his removal from office. The right of the people to an untainted judiciary and the right of the accused judge to be heard in his defense, alike imposed upon me the imperative duty of summoning you to dispose of the case.

The Constitution provides that the Governor "shall have power to convene the Legislature * * on extraordinary occasions" and that "at extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration." Doubtless the Governor is the sole judge of what constitutes the extraordinary occasion which shall justify him in convening the Legislature in extraordinary session, and doubtless he may present any subject whatever to such a session, when convened, for its consideration. But the clear distinction made by the Constitution between the functions of the Legislature in regular and in extraordinary session plainly indicates that an extraordinary session should be convened only in response to some emergent public demand and that such subjects alone should be recommended for consideration at such a session as are of general pressing and unusual importance. A matter so solemn and serious in its nature as a proceeding for the removal from office of a Justice of the Supreme Court should not be interrupted or complicated by the interjection therein of ordinary legislative business. Under our system of annual sessions of the Legislature, emergencies that call for consideration at an extraordinary session must necessarily be rare. I have accordingly refrained from recommending any subject of legislation for your consideration pending the hearing in Justice Hooker's case, and I now refrain from submitting to you not only important matters which were before you at your regular session, but also new matters of minor or local importance.

One subject in my judgment should be submitted to you for your consideration. The unfortunate scandals recently made public by the internal dissensions in the Equitable Life Assurance Society and by the investigation of its affairs by the Superintendent of Insurance have, not without just cause, aroused a feeling of intense alarm in the breasts of the thousands of our citizens who have invested their money in policies of life insurance, and of the thousands of non-residents who have been taught to respect the New York companies as safe and secure. While the business of life insurance, as at present conducted, is subject to State supervision and regulation for the purpose of guaranteeing solvency and the fulfillment of contracts on the part of the companies, it is evident that evils and abuses may exist under our law, that earnings which should be credited to the policy holders may be diverted to other purposes, that expenses of operation may be extravagant and wasteful, that unwise investments may be legally made and that trustees may deal indirectly with the trust funds for their personal advantage. That such a condition of affairs can exist reflects discredit upon the State.

Legislation is no panacea for those ills of the body politic which arise from a disordered moral sense. The multiplication of penal statutes does not diminish the spirit of lawlessness but is rather a symptom of its growth. But it is apparent that our insurance law is in some particulars obsolescent and inadequate, and that the management of the funds of these great companies is not sufficiently safeguarded.

The State owes a duty to policy holders and beneficiaries beyond that of comparing assets with liabilities and permitting the companies to justify their existence by the exhibition of

a satisfactory balance sheet and the prompt payment of losses. Investments must be restricted, salaries must be limited to amounts bearing a closer relation to the commercial value of the services rendered, trustees must be held to a stricter accountability, and the policy holders must be given a more effective share in the government of the companies. It may well be that the harsh and arbitrary remedy of dissolution and receivership should be made not only a penalty for insolvency but also a summary check upon a solvent company when it becomes irredeemably the plaything of lawless greed. The State cannot permit the subjects of its supervision to exist as licensed prodigals of other people's money without becoming an accomplice to the offense.

We cannot judge all life insurance companies by the sins of one. We should not destroy the edifice to rid ourselves of the vermin that infest it, nor should we kill the patient to stop the progress of the disease. A revision of our insurance law is necessary, but it should be made with calmness, deliberation and intelligence and after careful study and investigation.

The Superintendent of Insurance is authorized by law to "examine under oath the officers and agents of any such corporation and its books with reference to its business." Within the scope of his authority and the limits of his time the Superintendent has performed his duty with impartial thoroughness. Although he has informed me that, by reason of the statutory limitations upon his inquisitorial powers, and by reason of the magnitude of the task imposed upon him he would welcome the aid of a legislative investigating committee, I have been of the opinion that he, with his staff of experts and with the authority vested in him to conduct investigations at

the expense of the companies examined, was well qualified to collect all necessary evidence upon which to base new legislation and that no other investigation outside the courts of justice, was necessary or desirable, pending the investigation now being conducted by him.

It is, however, of the highest importance that a revision of the Insurance Law should be enacted as promptly as is consistent with a thorough knowledge of the subject. It is proper and necessary that the Legislature should determine for itself how the information upon which to base such a revision may best be obtained. If in its judgment an investigation conducted by its own members is calculated to produce the most satisfactory results such an investigation cannot too speedily be begun.

In order that you may be free to consider and act upon the subject at this session, I therefore, pursuant to the Constitution, do hereby recommend for your consideration the question of the appointment of a joint committee of the Senate and Assembly with the usual powers of such committees, to investigate, after your adjournment, the operations of life insurance companies doing business in the State, for the purpose of preparing and recommending to the next regular session of the Legislature such proposed legislation as may be adequate and proper to restore public confidence and to compel life insurance companies to conduct a safe, honest and open business for the benefit of their policy holders.

FRANK W. HIGGINS

**MATTER OF ABRAM SAMMONS, SUPERINTEND-
ENT OF THE POOR OF ULSTER COUNTY —
ORDER OF REMOVAL FROM OFFICE AND
OPINION**

STATE OF NEW YORK

EXECUTIVE CHAMBER

In the matter of the charges preferred against Abram Sammons as superintendent of the poor of the county of Ulster.

ORDER OF REMOVAL.

Charges of misconduct and malfeasance in office having been heretofore preferred by the Board of Supervisors of Ulster County against Abram Sammons, the superintendent of the poor of the county of Ulster, and a copy of said charges having been served on the said Sammons, and an opportunity having been given him to be heard in his defense, and he having filed an answer denying any misconduct or neglect of duty, and an order having been made by me appointing Egbert E. Woodbury of Jamestown, N. Y., commissioner to take the testimony and the examination of witnesses as to the truth of said charges, and to report the same to me and also the material facts which he deems to be established by the evidence, and the said commissioner having taken the testimony relating to such charges, and his report bearing date July 18th, 1905, and the evidence taken by him having been duly filed, and it appearing to me after an examination of the same that said Abram Sammons has been guilty of misconduct and malfeasance in office; it is therefore

ORDERED, That said Abram Sammons be, and he hereby is, removed from the office of superintendent of the poor of the county of Ulster.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this 31st day of
[L s] July in the year of our Lord one thousand nine
hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, N. Y., July 31, 1905

In the matter of the charges preferred against Abram Sammons as superintendent of the poor of the county of Ulster.

OPINION.

Voluminous charges of official misconduct were preferred in March, 1905, by the Board of Supervisors of Ulster county against Abram Sammons who since January 1, 1898, has been and now is Superintendent of the Poor of said County. On April 1, 1905, I appointed Judge Woodbury of Chautauqua county a commissioner to take the proofs and I have before me the evidence taken by him and his report of the facts established by the evidence.

Sammons, it appears, drew checks upon the county moneys deposited to his credit as Superintendent of the Poor between

September 13, 1898 and October 28, 1903, in various amounts aggregating \$2,707.61 for the payment of his life insurance premiums, personal notes, interest on mortgages and political contributions. He also drew checks on said account in various amounts aggregating \$2,964.84 between February 11, 1898 and October 31, 1903, for the benefit of his son, Warren Sammons. The withdrawal of these funds was grossly improper, whether Sammons borrowed or converted the money, and it does not appear that Sammons has ever made good in full his indebtedness to the county on account of the county moneys so improperly withdrawn and used by him.

He entertained visitors in large numbers at the county house and fed them and their horses at county expense. He followed the ancient, if not commendable custom of entertaining at county expense the board of supervisors, their friends and invited guests. He managed the county farm extravagantly and inefficiently, and made unnecessary and improvident purchases of supplies for the poor farm and house. He contracted bills on the credit of the county without authority, neglected to keep proper books of account, and in all respects conducted himself with little regard for the best interests of the people whose employee he was.

During the fiscal year ending October 31, 1897, it cost the county of Ulster about \$11,000 to maintain 102 inmates at the county house. During the fiscal year ending October 31, 1904, the cost of maintaining an average number of 88 inmates at the county house was \$18,098.33. No satisfactory explanation for this extraordinary increase is made.

I do not find that Sammons was an intentional wrongdoer. His conception of his duties as a public official is aptly stated in his own words addressed to an inspector of the State Board

of Charities at the county house about the 22nd day of January, 1904, to the effect that he did not care for any member of the State Board of Charities or of the Board of Supervisors, as he had been elected by the people and was responsible to the people only. This primitive notion of the public official as an elective despot making a law unto himself to guide his conduct, and relying on personal popularity to retain him in power, unfits Sammons for office and compels me to remove him.

FRANK W. HIGGINS

**REVOCATION OF JUSTICE STOVER'S DESIGNATION
TO THE APPELLATE DIVISION,
FOURTH DEPARTMENT, AT HIS OWN REQUEST**

STATE OF NEW YORK

EXECUTIVE CHAMBER

September 27, 1905

WHEREAS, The Honorable Martin L. Stover, a Justice of the Supreme Court of the Fourth Judicial District, having been heretofore designated to sit as an Associate Justice of the Appellate Division of the Supreme Court in and for the Fourth Judicial Department and he having filed his written request that such designation be revoked,

NOW THEREFORE, In accordance with the statute in such case made and provided, the designation heretofore made of date of October 19, 1903, of the Honorable Martin L. Stover to sit as an Associate Justice of the Appellate Division of the

Supreme Court in and for the Fourth Judicial Department is hereby, and at his own request, revoked.

Given under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twenty-
[L S] seventh day of September in the year of our Lord
one thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor :

FRANK E. PERLEY

Secretary to the Governor

**DESIGNATION OF JUSTICE NASH TO THE AP-
PELLATE DIVISION, FOURTH DEPARTMENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

WHEREAS, An order having been made and filed with the Secretary of State upon the written request of the Honorable Martin L. Stover one of the Associate Justices of the Appellate Division of the Supreme Court in and for the Fourth Judicial Department revoking the designation of the said Stover as such Associate Justice and a vacancy having thus occurred,

NOW THEREFORE, In accordance with Section two of Article six of the Constitution, the

HONORABLE EDWIN A. NASH

of the village of Avon, a Justice of the Supreme Court of the Seventh Judicial District is hereby designated as Associate

Justice of the Appellate Division of the Supreme Court in and for the Fourth Judicial Department for the term ending December 31, 1906.

GIVEN under my hand and the Privy Seal of the State at the Capitol in the city of Albany, this twenty-[L s] eighth day of September in the year of our Lord one thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY,
Secretary to the Governor.

PROCLAMATION ORDERING SPECIAL ELECTION FOR STATE SENATOR IN THE TWENTY-FOURTH SENATE DISTRICT

STATE OF NEW YORK

EXECUTIVE CHAMBER

WHEREAS, A vacancy exists in the office of State Senator for the Twenty-fourth Senate District, in consequence of the death of Henry S. Ambler,

THEREFORE, By virtue of the authority vested in me, a special election is hereby ordered to be held in and for the said Twenty-fourth Senate District on Tuesday, the seventh day of November 1905, for the purpose of choosing a Senator in the place of the said Henry S. Ambler, deceased, whose

term of office began on the first day of January 1905, and will expire on December 31, 1906.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany, this twenty-
[L S] ninth day of September in the year of our Lord
one thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**DESIGNATION OF JUSTICE CLARKE TO THE
APPELLATE DIVISION, FIRST DEPARTMENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

In accordance with Section two of Article six of the Constitution the Honorable John Proctor Clarke, of New York City, who is a Justice of the Supreme Court of the First Judicial District, is hereby designated as an Associate Justice of the Appellate Division of the Supreme Court in and for the First Judicial Department in the place of the Honorable Morgan J. O'Brien, who has been designated as Presiding Justice of said Appellate Division, for and during the term of five years from the date hereof.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany, this fourth
[L S] day of October in the year of our Lord one
thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

PROCLAMATION REGARDING THE DEATH OF S. FRED NIXON

The people of the State of New York learn with sorrow of the untimely death of

HONORABLE S. FRED NIXON

the Speaker of the Assembly. He had the affection and respect of all who knew him. In his long service in the Legislature he had won a position of deserved and recognized leadership. His young and useful life gave fair promise of brilliant success in wider fields. His broad experience, his tact and his sound judgment rendered him exceptionally well qualified for his responsible and arduous duties. His death leaves a vacant place that can not easily be filled.

It is proper that the Governor should, in the absence of the Legislature, make official recognition of the loss sustained by the people and publicly express the respect due to the character and services of the deceased.

NOW THEREFORE, I, Frank W. Higgins, Governor of the State of New York, do direct that the flags upon all the public buildings of the State, including the armories and arsenals, be displayed at halfmast up to and including the day of the funeral.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany, this tenth
[L s] day of October in the year of our Lord one
thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**PROCLAMATION OF A SPECIAL ELECTION IN
THE SIXTEENTH SENATE DISTRICT**

Copy.

STATE OF NEW YORK

EXECUTIVE CHAMBER

WHEREAS, A vacancy exists in the office of State Senator for the Sixteenth Senate District, in consequence of the resignation of Peter J. Dooling,

THEREFORE, By virtue of the authority vested in me, a special election is hereby ordered to be held in and for the said Sixteenth Senate District on Tuesday, the seventh day of November 1905, for the purpose of choosing a Senator in the place of the said Peter J. Dooling, resigned, whose term of office began on the first day of January 1905, and will expire on December 31, 1906.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany, this seven-
[L S] teenth day of October in the year of our Lord one
thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

REVOCATION OF THE DESIGNATION OF JUSTICE HOUGHTON AS ASSOCIATE JUSTICE OF THE APPELLATE DIVISION FOR THE THIRD DEPARTMENT

STATE OF NEW YORK

EXECUTIVE CHAMBER

WHEREAS, The Honorable James W. Houghton, a Justice of the Supreme Court of the Fourth Judicial District having been heretofore designated to sit as an Associate Justice of the Appellate Division of the Supreme Court in and for the Third Judicial Department and he having filed his written request that such designation be revoked;

NOW THEREFORE, In accordance with the statute in such case made and provided the designation heretofore made of date September 10, 1903, of the Honorable James W. Houghton to sit as Associate Justice of the Appellate Division of the Supreme Court in and for the Third Judicial Department is hereby and at his own request revoked.

GIVEN under my hand and the Privy Seal of the State at the Capitol in the city of Albany, this twenty-[L s] fifth day of October in the year of our Lord one thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**DESIGNATION OF JUSTICE JAMES W. HOUGHTON
TO THE APPELLATE DIVISION, FIRST DE-
PARTMENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with section two of article six of the Constitution, the

HONORABLE JAMES W. HOUGHTON

of the village of Saratoga Springs, who is a Justice of the Supreme Court of the Fourth Judicial District, is hereby designated as Associate Justice of the Appellate Division of the Supreme Court in and for the First Judicial Department, for the term ending October twenty-fifth, 1910, in the place of Edward W. Hatch, resigned.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twenty-
[L. s.] fifth day of October in the year of our Lord one
thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**PROCLAMATION — CALLING ATTENTION TO
THE PROHIBITION OF POLITICAL ASSES-
MENTS**

October 25, 1905.

TO ALL PUBLIC OFFICERS AND EMPLOYEES :

Your attention is called to section 24 of the Civil Service Law, which reads as follows :

“POLITICAL ASSESSMENTS PROHIBITED.

No officer, agent, clerk, or employee under the government of the state of New York or any civil division or city thereof shall, directly or indirectly, use his authority or official influence to compel or induce any other officer, clerk, agent or employee under said government, or any civil division or city thereof, to pay or promise to pay any political assessment, subscription or contribution. Every said officer, agent, clerk or employee who may have charge or control in any building, office or room occupied for any purpose of said government, or any said division or city thereof, is hereby authorized to prohibit the entry of any person, and he shall not knowingly permit any person to enter the same for the purpose of therein making, collecting, receiving or giving notice of any political assessment, subscription or contribution; and no person shall enter or remain in any said office, building or room, or send or direct any letter or other writing thereto, for the purpose of giving notice of, demanding or collecting a political assessment, nor shall any person therein give notice of, demand, collect or receive any such assessment, subscription or contribution; and no person shall prepare or make out, or take any

part in preparing or making out, any political assessment, subscription or contribution with the intent that the same shall be sent or presented to or collected of any officer, agent or employee, subject to the provisions of this act, under the government of the state of New York, or that of any civil division or city thereof, and no person shall knowingly send or present any political assessment, subscription or contribution to or request its payment of any said officer, agent or employee. Any person who shall be guilty of violating any provision of this section shall be deemed guilty of a misdemeanor."

FRANK W. HIGGINS

Governor

**DESIGNATION OF JUSTICE JOHN M. KELLOGG
AS ASSOCIATE JUSTICE OF THE APPELLATE
DIVISION FOR THE THIRD DEPARTMENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

WHEREAS, An order having been made and filed with the Secretary of State upon the written request of the Honorable James W. Houghton, one of the Associate Justices of the Appellate Division of the Supreme Court in and for the Third Judicial Department revoking the designation of the said Houghton as such Associate Justice and a vacancy thus having occurred;

NOW THEREFORE, In accordance with Section 2 of Article 6 of the Constitution the

HONORABLE JOHN M. KELLOGG

of the city of Ogdensburg, who is a Justice of the Supreme Court of the Fourth Judicial District is hereby designated as Associate Justice of the Appellate Division of the Supreme Court in and for the Third Judicial Department for the term ending November 13, 1910, such designation as Associate Justice to take effect from and after the thirteenth day of November, 1905.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany, this twenty-
[L s] fifth day of October in the year of our Lord one
thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

THANKSGIVING PROCLAMATION

STATE OF NEW YORK

EXECUTIVE CHAMBER

Abundant prosperity has blessed the people of this State in the past year. No rumor of war nor threat of domestic violence has disturbed our peaceful progress. Law and order have prevailed within our borders; labor has been fully employed; all forms of industry have flourished and the future is bright with the promise of material and moral betterment;

NOW THEREFORE, In conformity with our ancient custom, I, Frank W. Higgins, Governor, do hereby designate Thurs-

day, the thirtieth day of November, 1905, as a day of general thanksgiving to Almighty God for the great benefits that we have received at his hands.

DONE at the Capitol in the city of Albany, this eighth
[L S] day of November in the year of our Lord one
thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**MATTER OF CHARGES AGAINST FREDERICK D.
KILBURN, SUPERINTENDENT OF BANKS, BY
DEPOSITORS OF THE GERMAN BANK OF
BUFFALO—DISMISSAL OF CHARGES**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, N. Y., November 9, 1905

*In the matter of the charges preferred against Frederick D.
Kilburn, Superintendent of Banks, by the Organization
of Depositors of the German Bank of Buffalo.*

DISMISSAL OF CHARGES:

The organization of depositors of the German Bank of Buffalo, has preferred charges against Frederick D. Kilburn, Superintendent of Banks, alleging improper conduct on his part, (1) in relation to the official examinations of said bank by the banking department, and (2) in relation to his failure to close the bank before the morning of the 5th day of December, 1904.

Mr. Kilburn has filed his answer to said charges. The Public Officers Law provides that "an officer appointed by the Governor, by and with the advice and consent of the Senate, may be removed by the Senate upon the recommendation of the Governor," and that "the Governor, before making a recommendation to the Senate for the removal of any officer, may in his discretion, take proofs for the purpose of determining whether such recommendation shall be made."

In my judgment it is unnecessary for me to take proofs in this case, as the facts are fully developed in the papers filed with me, and the matter may be disposed of thereon.

As to the first charge, that the examinations of the bank were not sufficiently thorough, it must be remembered that no system of supervision has yet been devised that wholly prevents bank failures, and that the utmost vigilance on the part of the banking department cannot insure depositors against loss.

An interesting comparison might be made in this connection between the financial condition of the German Bank and other State banks closed by Mr. Kilburn in the past year, and that of national banks which have gone into receivership during the same period. The State system of examinations does not suffer by the contrast. Yet the Comptroller of the Currency is not attacked for incompetency or misconduct whenever a national bank fails.

The Banking Law imposes a duty as to the inspection and supervision of banks upon the superintendent, but it does not substitute the superintendent for the board of directors as the governing body of the bank, nor hold him responsible for their misconduct, nor are shareholders and creditors dependent upon him alone for information.

Section 19 of the Banking Law provides as follows :

"The creditors and shareholders of any such corporation whose debts or shares shall amount to one thousand dollars may make application to the supreme court by a verified petition setting forth facts showing that an examination of the affairs of the corporation should be made, and the court may thereupon, in its discretion, order such an examination to be made by a referee for the purpose of ascertaining the safety of the investments and the prudence of the management of the corporation. The result of every such examination, together with the opinion of the referee thereon, shall be published in such manner as the court shall direct. The court shall make such order in respect to the expenses of the examination and publication as it may deem proper."

I am of the opinion that the examinations of the German Bank made under the direction of Mr. Kilburn, were made with reasonable thoroughness and good judgment.

As to the charge that the superintendent permitted the bank to open its doors after he knew that it was insolvent, I find that Mr. Kilburn acted in good faith and with the intention of protecting from loss those who were concerned in the soundness of the bank. The law provides that in order to justify the superintendent in taking possession, he "shall have reason to conclude that such bank is in an unsound or unsafe condition to do banking business." Each case must be judged separately. The statute does not require the superintendent to close the doors of a bank immediately upon discovering the fact that it is in distress, but leaves much to his discretion. Mr. Kilburn concluded, after consultation with the Clearing House Committee, and others, that it would be safe and proper to permit the bank to open on the morning of Monday, December 5, 1904. While as a general rule it may be prudent for the superintendent when he finds that the liabilities

of a bank are in excess of its ready assets, to close the institution without delay, it by no means follows that in all cases an imperative and immediate duty devolves on him to do so. Common experience teaches us that aid may at times be obtained and the situation relieved without loss and with great saving to depositors. A bank which as a going concern might be able to pay every depositor in full would be fortunate if its assets did not depreciate in the hands of a receiver so as to pay less than 100 cents on the dollar.

Had the expected assistance from the directors and the Clearing House been furnished the German Bank, the run would doubtless have ceased, and depositors would have sustained no loss. As it was, some were paid in full and the others will receive a smaller dividend than they would otherwise have done. This is unfortunate, but infallibility cannot be demanded of a public officer who is suddenly confronted at once with the necessity of prompt action and the responsibility for correct judgment. All that can be expected is the exercise of good faith and reasonable prudence and common sense.

The charges are therefore dismissed.

FRANK W. HIGGINS

**THE PUBLIC HEALTH—ORDER DIRECTING
THE COMMISSIONER OF HEALTH TO EXAM-
INE INTO ALLEGED NUISANCE AT ROCHESTER**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE COMMISSIONER OF HEALTH:

I have been presented with a petition signed by various residents of the city of Rochester, alleging that on the south

side of Campbell street in said city of Rochester, the Rochester Hide and Tallow Company is engaged in operating its plant so as to create a public nuisance and menace to the health and comfort of the people residing in that vicinity;

I, therefore, require of you, in accordance with the provisions of section six of article I. of the Public Health Law, to make an examination into the alleged nuisances and questions affecting the security of life and health in the locality aforesaid, and to report the results thereof to me on or before the 1st day of January, 1906.

Dated at the Capitol in the city of Albany this first
[L s] day of December in the year of our Lord one
thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**THE PUBLIC HEALTH—ORDER DIRECTING
COMMISSIONER OF HEALTH TO EXAMINE
INTO ALLEGED NUISANCE AT HORNELLS-
VILLE**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE COMMISSIONER OF HEALTH:

I have been presented with a petition signed by L. Riddle, health officer of the town of Canisteo, Steuben county, and G. L. Preston, health officer of the village of Canisteo, Steuben county, alleging that the city of Hornellsville is allowing the refuse of its sewers to pour into the waters of the Canisteo river, which river runs through the town and village of Canisteo; and also that the city of Hornellsville maintains a dump-

ing ground for garbage of all kinds, the cleanings of privy vaults, and other refuse matter, between said city and the town of Canisteo, the accumulations of which find their way several times during each year, into the waters of the Canisteo river, thereby creating a public nuisance and menace to the health and comfort of the people residing in the town and village of Canisteo, N. Y.

I, therefore, require of you, in accordance with the provisions of section 6 of article I. of the Public Health Law, to make an examination into the alleged nuisances and questions affecting the security of life and health in the locality aforesaid, and to report the results thereof to me on or before the first day of January, 1906.

Dated at the Capitol in the city of Albany this first
[L s] day of December in the year of our Lord one
thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**REDESIGNATION OF JUSTICE INGRAHAM TO
THE APPELLATE DIVISION, FIRST DEPART-
MENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

IT APPEARING to my satisfaction that the public interest requires it;

THEREFORE, in accordance with section two of article six of

the Constitution and the statute in such case made and provided, the

HONORABLE GEORGE L. INGRAHAM

of the county of New York, who is a justice of the Supreme Court of the First Judicial District, is hereby redesignated as an associate justice of the Appellate Division of the Supreme Court in and for the First Judicial Department, for a term of five years from and after the first day of January, 1906, his prior designation as such associate justice being about to expire.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this eighth day
[L S] of December in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**REDESIGNATION OF JUSTICE PATTERSON TO
THE APPELLATE DIVISION, FOR THE FIRST
DEPARTMENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

IT APPEARING to my satisfaction that the public interest requires it;

THEREFORE, In accordance with section two of article six of

the Constitution and the statute in such case made and provided, the

HONORABLE EDWARD PATTERSON

of the county of New York, who is a justice of the Supreme Court of the First Judicial District, is hereby redesignated as an associate justice of the Appellate Division of the Supreme Court in and for the First Judicial Department, for a term beginning January 1, 1906, and ending with his term of office on December 31, 1909, his prior designation as such associate justice being about to expire.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this eighth day
[Ls] of December in the year of our Lord one thousand
nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**DESIGNATION OF JUSTICE COCHRANE TO THE
APPELLATE DIVISION, THIRD DEPART-
MENT**

STATE OF NEW YORK

EXECUTIVE CHAMBER

IT APPEARING to my satisfaction that the public interest requires it;

THEREFORE, In accordance with section two of article six of the Constitution and the statute in such case made and provided, the

HONORABLE AARON V. S. COCHRANE

of the county of Columbia, who is a justice of the Supreme court of the Third Judicial District, is hereby designated as

an associate justice of the Appellate Division of the Supreme Court, in and for the Third Judicial Department, for the term of five years from and after the 9th day of January, 1906, in the place of the Hon. Emory A. Chase, whose term as an associate justice of said department is about to expire.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this eighth
[LS] day of December in the year of our Lord one
thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

**THE PUBLIC HEALTH—ORDER DIRECTING
THE COMMISSIONER OF HEALTH TO EXAM-
INE INTO ALLEGED NUISANCE AT BATAVIA**

STATE OF NEW YORK

EXECUTIVE CHAMBER

TO THE COMMISSIONER OF HEALTH:

Having been presented with a petition signed by one Hiram Swezey of the village of Batavia, N. Y., alleging that said village of Batavia has permitted for a long time past, and is at present permitting the flow from certain of its sewers along East Main street to spread over and settle upon portions of his land situate in said village, thereby creating a public nuisance and menace to the health and comfort of said Swezey and his family, and of those dwelling in that section of said village or who are obliged to pass along the streets in that vicinity.

I, therefore, require of you, in accordance with the provisions of section 6 of article I. of the Public Health Law, to make an examination into the alleged nuisances and questions affecting the security of life and health in the locality aforesaid, and to report the results thereof to me on or before the first day of February, 1906.

Dated at the Capitol in the city of Albany this twelfth [Ls] day of December in the year of our Lord one thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

MATTER OF ALBERT T. PATRICK—APPLICATION FOR A STAY OF EXECUTION OF SENTENCE—MEMORANDUM

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, December 19, 1905

In the matter of Albert T. Patrick.

Memorandum:

Albert T. Patrick, convicted on the 7th day of April 1902, on an indictment charging him with the murder of William M. Rice on or about the 23rd day of September, 1900, and now confined in Sing Sing Prison under sentence of death to be executed in the week of January 22, 1906, has presented to me his personal informal application for a stay of execution of sentence and for an order relieving him from solitary

confinement and directing the warden of Sing Sing Prison to take him out of prison during business hours to enable him personally to prepare and bring further proceedings in the courts in his case. In this communication Patrick states that he will neither apply for or accept Executive clemency.

The Governor has power to exercise clemency by granting reprieves, commutations or pardons. He has no power to grant the relief now asked for by Patrick.

I am advised by Hon. David B. Hill, of counsel for Patrick, that his attorneys have under advisement further proceedings in the courts, or, ultimately, if need be, an application to the Governor for a commutation or pardon, together with a respite pending the determination thereof. On such an application I have power to conduct a hearing, personally or by a referee, to subpoena witnesses, to compel the production of books and papers, and to administer oaths.

The present petition is denied, but without prejudice to an application for Executive clemency.

FRANK W. HIGGINS

**APPOINTMENT OF AN EXTRAORDINARY TRIAL
TERM AT MINEOLA, AND DESIGNATION OF
JUSTICE ROGERS THERETO**

STATE OF NEW YORK

EXECUTIVE CHAMBER

It appearing to my satisfaction that the public interest requires it;

THEREFORE, In accordance with the statute in such case made and provided, I do hereby appoint an Extraordinary

Trial Term of the Supreme Court to be held at the court house in the village of Mineola, and county of Nassau, on Monday, the fifth day of February, 1906, at ten o'clock in the forenoon of that day, and to continue so long as may be necessary for the disposal of the business which may be brought before it; and I do hereby designate the

HONORABLE WATSON M. ROGERS

of Watertown, who is a Justice of the Supreme Court of the Fifth Judicial District, to hold the said Extraordinary Trial Term as hereinbefore described; and I do further direct that notice of such appointment be given by publication of this order once in each week for two successive weeks in the *Hempstead Sentinel* newspaper, published in Nassau county.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twenty-
[L. S.] eighth day of December in the year of our Lord
one thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

DESIGNATION OF JUSTICE CHASE TO THE COURT OF APPEALS

STATE OF NEW YORK

EXECUTIVE CHAMBER

WHEREAS, The judges of the Court of Appeals have certified to me that said court is unable by reason of the accumu-

lation of causes pending therein to hear and dispose of the same with reasonable speed;

THEREFORE, By virtue of the power conferred upon me by section 7 of article VI. of the Constitution, I do hereby designate the

HONORABLE EMORY A. CHASE

of the county of Greene, who is a justice of the Supreme Court for the Third Judicial District to serve as an associate judge of the Court of Appeals from and after the ninth day of January, 1906, until the causes undisposed of in said court shall have been reduced to two hundred in number.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this twenty-
[Ls] ninth day of December in the year of our Lord one
thousand nine hundred and five.

FRANK W. HIGGINS

By the Governor:

FRANK E. PERLEY

Secretary to the Governor

STATEMENT OF
Pardons, Commutations and Respites
GRANTED BY
Frank W. Higgins, Governor
DURING THE YEAR
1905

PARDONS

January 12, 1905. David Braunstein. Sentenced December 29, 1904; county, New York; crime, violating section 288 of the Penal Code; term, thirty days; City Prison.

Braunstein was convicted of failing to comply with an order made by a magistrate, requiring him to pay one dollar a week toward the support of one of his children who had been committed to the New York Juvenile Asylum.

The amount has now been paid, and further imprisonment would cause hardship to Braunstein's family.

January 27, 1905. Howard Flanary. Sentenced November 4, 1904; county, New York; crime, grand larceny, second degree; maximum term, five years; Elmira Reformatory, and

January 27, 1905. Edwin L. Kendall. Sentenced November 4, 1904; county, New York; crime, grand larceny, second degree; maximum term, five years; Elmira Reformatory.

Although these prisoners have served only a short term I have concluded to order their release, believing that it will be much wiser to permit them to return to their homes than it would be to keep them longer in confinement. They are members of very respectable families, are but seventeen years of age, had always been regarded as of most excellent character, and I am convinced that they did not fully appreciate the serious nature of the crime they committed.

Immediate employment has been secured for them.

The complainant was fully reimbursed before sentence was pronounced.

January 30, 1905. William McMillan. Sentenced October 19, 1904; county, Queens; crime, rape, second degree; maximum term, ten years; Elmira Reformatory.

Granted on the recommendation of ten of the jurors and many other residents of Queens County.

The prisoner was nineteen years of age when convicted, was of previous good character, and the circumstances were not such as to demand severe punishment.

February 8, 1905. Alexander Stewart. Sentenced December 14, 1900; county, New York; crime, manslaughter, first degree; term, twenty years; Sing Sing Prison.

Granted on condition that Stewart proceed forthwith to Freeville, N. Y., and there become and remain a member of the George Junior Republic, subject to all the rules and regulations, and to the jurisdiction and control of those having the management thereof, until duly discharged.

While an inmate of the House of Refuge Stewart killed one of his companions there. The sentence was probably not out of proportion to the crime, but considering the prisoner's youth (he was only thirteen) I do not think he ought to be required to serve more of it than may be necessary to restrain him from further crime, so far as that can be effected by imprisonment. His conduct in prison has been uniformly good, giving evidence of thorough reformation, and as an opportunity is now offered for him to become a member of the George Junior Republic, which I think can not fail to prove of great advantage to him, I have concluded to pardon him on the above condition.

February 10, 1905. Walter D. Valentine. Sentenced January 29, 1897; county, New York; crime, petit larceny; term, six months; New York Penitentiary.

The petitioner, together with one Fender, was convicted in January, 1897, of fraudulently obtaining from the complainant, by means of fabricated stock quotations, the sum of three dollars. An appeal was taken, but it was not until December last that it was brought on for argument, and the judgment having been affirmed, application is now made for a pardon. It is recommended by the District Attorney who procured the conviction, by six of the jurors, (the other members of the jury not being found) and by many other citizens.

During the eight years that have elapsed since his conviction Valentine has led a good life and been constantly engaged in a legitimate business, and it does not seem to me that any good purpose can be subserved by compelling him now to undergo a term of imprisonment.

February 21, 1905. Charles H. Gardner. Sentenced November 21, 1904; county, New York; crime, extortion; term, six months; New York Penitentiary, and

February 21, 1905. James H. Gelabert. Sentenced December 23, 1904; county, New York; crime, extortion; term, three months; New York Penitentiary.

These prisoners undertook to enforce payment of wages due them by threatening their employer with a revolver. They believed he intended to swindle them, and, from the facts as reported to me, it would appear that they had good ground for so believing. Of course that was no excuse for using a revolver, but the case was not one for severe punishment, as evinced by the moderate sentence imposed, and under all the circumstances, and as they have families in great need of their support, I have concluded to pardon them. They are both of them industrious men, of good character, and Judge McMahon, who sentenced Gardner, writes: "I was satisfied upon the trial

that neither of the defendants understood the serious nature of the act they committed. I do not regard either of these men as an intentional criminal."

February 23, 1905. John W. Mack. Sentenced June 17, 1904; county, New York; crime, attempting to commit burglary, third degree; maximum term, two years and six months; Elmira Reformatory.

The prisoner is suffering from an enlargement of the glands of the neck requiring immediately an operation which can not well be performed at the reformatory.

March 23, 1905. Henry Milner. Sentenced February 15, 1901; county, Kings; crime, burglary, third degree; maximum term, five years; Elmira Reformatory. Transferred to Clinton Prison.

Milner was convicted of breaking and entering a storehouse and stealing property worth about twenty dollars. His conduct has been good, he has been imprisoned several months longer than he would have been had he been sentenced to the State Prison for the maximum term and received the usual commutation, and his health is very poor.

March 30, 1905. John Karbowski. Sentenced January 5, 1905; county, Richmond; crime, assault, third degree; term, six months; Kings County Penitentiary.

Recommended by the district attorney. Karbowski has a wife and three children who are in destitute circumstances and whom he supported until his conviction. His imprisonment, if continued, would bring great distress upon them, and his wife, who was the complainant against him, asks for his release.

April 17, 1905. Solomon Hochberger. Sentenced January 20, 1905; county, New York; crime, receiving stolen goods; term, three months; New York Penitentiary.

This pardon, releasing the prisoner a few days before the expiration of his sentence, is granted in consideration of his previous good character, and on the recommendation of many prominent business men of New York City.

April 22, 1905. Eugene Blake. Sentenced April 3, 1905; county, Columbia; crime, public intoxication; term, sixty days; Albany County Penitentiary.

Granted on the application of the committing magistrate. The prisoner's mother has just died and he is released so that he may attend the funeral.

April 25, 1905. Edmund Reidy. Sentenced January 13, 1905; county, Kings; crime, assault, third degree; term, six months; Kings County Penitentiary.

Recommended by the justices of the Court of Special Sessions who imposed the sentence, and by the district attorney. The prisoner has been pretty severely punished, and he is the only support of a family of eight children who are now being cared for by a charitable society.

May 3, 1905. William Waters. Sentenced March 17, 1905; county, Kings; crime, assault, third degree; term, three months; Kings County Penitentiary.

Granted on the petition of the presiding justice of the court in which Waters was convicted, of the district attorney, and of other prominent citizens of Kings County. This was the prisoner's first offense and he has been sufficiently punished for it.

June 29, 1905. Edward A. Leasure. Sentenced March 1, 1901; county, Kings; crime, manslaughter, second degree; term, fifteen years; Sing Sing Prison.

The sentence was commuted by Governor Odell to seven years and six months subject to deduction for good conduct, under which Leasure would obtain his discharge on the fifteenth day of March next.

A very strong appeal for a full pardon is now made by Admiral Charles E. Clark, U. S. N. He says that Leasure was of almost invaluable service on board the Oregon during the long run around South America, and afterwards at Santiago, and that he is a man of excellent character. The petition has the cordial support of many prominent men of New York City, and of the members of the Naval Committee of the House of Representatives. It is understood that a pardon is necessary in order to render Leasure eligible for re-enlistment in the navy, which is very much desired.

June 30, 1905. William Warren. Sentenced April 11, 1905; county, Kings; crime, policy possession; term, three months; Kings County Penitentiary, and

June 30, 1905. Joseph Melville. Sentenced April 11, 1905; county, Kings; crime, policy possession; term, three months; Kings County Penitentiary, and

June 30, 1905. Charles Abbott. Sentenced April 11, 1905; county, Kings; crime, policy possession; term, six months; Kings County Penitentiary.

Granted on the application of the judge and the district attorney, in consideration of the prisoners having rendered valuable aid in securing the conviction of the man "who was the head and front for years of the policy business in Kings County," a conviction which, in the district attorney's opinion,

will strongly tend "to break up and root out the evil in Brooklyn."

July 8, 1905. Claude J. Dupaquier. Sentenced April 14, 1904; county, New York; crime, assault, third degree; term, one year, and fine, \$500.00; New York Penitentiary.

The term of imprisonment for one year expired, with deduction for good conduct, on February 15th, since which date the prisoner has been detained for non-payment of the fine. He can not pay it without depriving his wife and children of all means of support, and the district attorney recommends that he be released, being of the opinion that he has suffered all the punishment that justice requires.

August 2, 1905. George Cameron. Sentenced May 12, 1896; county, Kings; crime, sodomy; maximum term, twenty years; Elmira Reformatory. Transferred to Clinton Prison.

About three years ago Cameron was transferred from the reformatory to Clinton Prison. His conduct has been good, but he is deficient mentally and probably he could never obtain a parole. He has been more than sufficiently punished.

August 7, 1905. John Murphy. Sentenced May 19, 1905; county, Madison; crime, petit larceny; term, 180 days; Onondaga County Penitentiary.

The prisoner, a boy of seventeen years, was convicted of stealing a pair of shoes worth about two dollars. The committing magistrate is now satisfied that the sentence was too severe, and recommends a pardon.

August 14, 1905. Grant Buren. Sentenced May 7, 1901; county, Washington; crime, burglary, second degree; maxi-

mum term, ten years; Elmira Reformatory. Transferred to Clinton Prison.

The crime was not a very serious one, and the judge writes that, had he been sentencing the prisoner for a definite term, he would not have fixed it at more than a year.

Buren was only eighteen when convicted, and his health is very poor.

October 4, 1905. Matilda Smith. Sentenced July 21, 1905; county, Kings; crime, violating section 289 of the Penal Code; term, six months; Kings County Penitentiary.

The prisoner was convicted of neglecting to care properly for her children. There is good reason to believe that she will not repeat the offense, and the justices who sentenced her recommend that she be pardoned.

October 10, 1905. William Rucker. Sentenced April 8, 1905; county, Monroe; crime, receiving stolen property; term, one year; Monroe County Penitentiary.

The prisoner is very ill and further confinement would probably render recovery impossible. The judge who sentenced him favors his application for clemency.

October 24, 1905. Charles Bassett. Sentenced March 27, 1905; county, Kings; crime, burglary, third degree and grand larceny; term, eight years; Sing Sing Prison.

The Governor of Connecticut has made requisition for the return of this prisoner to that State, where he is charged with having committed a most brutal murder. The papers accompanying the requisition leave no doubt of his guilt. After committing the murder he came into this State, and, upon conviction of the crimes of burglary and grand larceny, was sentenced to

the state prison where he now is. If he serves out the sentence he will, no doubt, escape punishment for the murder, a failure of justice which ought if possible to be avoided. I have therefore pardoned him and have ordered that he be surrendered to the Connecticut authorities.

(Bassett was taken to Connecticut, convicted of the murder and sentenced to imprisonment for life.)

November 10, 1905. George Fletcher. Sentenced June 30, 1905; county, New York; crime, petit larceny; term, six months; City Prison.

After his conviction the prisoner was paroled, sentence being suspended, but having failed to observe the conditions of his parole, he was rearrested and committed to the city prison.

He is the son of most respectable parents who plead very earnestly for his pardon, and the same is recommended by the magistrate before whom he was tried, in the belief that his punishment has been sufficient to deter him from further wrongdoing.

November 15, 1905. Jules Riley. Sentenced June 9, 1905; county, Rensselaer; crime, assault, third degree; term, six months; Albany County Penitentiary.

Riley has a wife and three young children who are in sore need of his support. He has served all but about three weeks of his sentence, and the judge and the district attorney recommend that he be released.

November 29, 1905. Eugene F. Hulse. Sentenced May —, 1905; county, Suffolk; crime, rape, second degree; term, nine months; Suffolk County Jail.

Very strongly recommended by Judge Wilmot M. Smith, Henry H. Preston, Rev. Irving McElroy and many other

prominent citizens of Suffolk County. Severe punishment was not demanded, and it is probable that no prosecution would have been instituted had the facts been more fully understood.

December 8, 1905. William Gray. Sentenced March 27, 1905; county, New York; crime, petit larceny; term, one year; City Prison.

The prisoner, a young lad, was convicted of stealing one dollar and twenty-five cents. It is said that he had also committed other larcenies of small amounts, but, taking everything into account, he has been punished enough.

December 30, 1905. Loomis Mackey. Sentenced July 11, 1905; county, New York; crime, petit larceny; term, six months; New York Penitentiary.

The prisoner is released a few days before the expiration of his sentence, this being his first offense and his family being in need.

COMMUTATIONS

January 20, 1905. Luciano Tudisco. Sentenced October 28, 1903; county, Wyoming; crime, assault, second degree; minimum term, three years and six months; maximum term, four years; Auburn Prison.

Commutated to one year, two months and seventeen days, actual time.

Recommended by the judge, the district attorney, nine of the jurors and other citizens.

The judge writes that the jury would have been fully warranted in acquitting Tudisco on the ground of self defense, and he feels that, in view of all the circumstances, the sentence was too severe.

January 24, 1905. Walter Webb. Sentenced September 4, 1903; county, New York; crime, blackmail; minimum term, two years; maximum term, two years and six months; Sing Sing Prison.

Commutated to one year, four months and twenty-three days, actual time.

The prisoner sent a threatening letter with intent to extort money. He gained nothing by it, and nobody lost anything. He probably did not know, when sending the letter, that he was committing a crime, and, as it was his first offense, I think he has suffered a sufficient penalty.

January 31, 1905. Max H. Grauer. Sentenced March 1, 1895; county, New York; crime, arson, first degree; term, thirty years; Sing Sing Prison.

Commutated to sixteen years, subject to deduction for good conduct.

Recommended by Judge Vernon M. Davis, who conducted the prosecution, and who also had charge of a number of other cases of arson which were tried about the time of Grauer's conviction. Considering Grauer's advanced age and the fact that he is in very poor health, imprisonment for the term to which the sentence is commuted will, I think, be sufficient for all the purposes of justice.

February 1, 1905. George A. Smith. Sentenced February 19, 1903, to be executed; county, Monroe; crime, murder, first degree; Auburn Prison.

Commutated to imprisonment for life.

This commutation is granted on the recommendation of Judges Bartlett and Vann of the Court of Appeals, who dissented from the judgment of the court affirming the conviction.

The facts are stated in the reports of the case, New York reports, vol. 172 page 210, and vol. 180 page 125.

The prisoner was seventy years of age at the time of the homicide and has lain in jail between seven and eight years. "It seems to the dissenting judges that it is unseemly and contrary to public policy that a man now nearly eighty years of age, convicted upon circumstantial evidence, should suffer the death penalty. In the order of nature he has but a short time to live, and the dissenting judges suggest that a commutation to life imprisonment would work out substantial justice."

February 10, 1905. William F. Miller. Sentenced April 30, 1900; county, Kings; crime, grand larceny, first degree; term, ten years; Sing Sing Prison.

Commutated to four years, eight months and twelve days, actual time.

Miller was the promoter and manager of what was known as the Franklin Syndicate, a brief statement of whose fraudulent operations is contained in the opinion delivered in the Court of Appeals in the case of the People vs. Miller, 169 N. Y., 339.

That Miller fully deserved the punishment meted out to him by the trial court can not be doubted, but I have concluded to commute the sentence on account of the assistance rendered by him in securing the conviction, in the county of New York, of one of his confederates who is now in Sing Sing prison. This is done on the recommendation of District Attorney Clarke of Kings county, who prosecuted Miller, and of District Attorney Jerome of New York county, who prosecuted Miller's confederate.

March 11, 1905. James Flynn. Sentenced June 22, 1903; county, New York; crime, attempting to commit burglary, third degree; term, two years and six months; Sing Sing Prison.

Commuted to one year, eight months and twenty days, actual time.

Flynn is very ill and probably can not live until the end of his term, about three months hence, and his mother desires to take him home and care for him.

March 30, 1905. Silas H. Woodruff. Sentenced March 9, 1903; county, Ontario; crime, grand larceny, second degree; minimum term, one year and one month; maximum term, three years.

Commuted to two years and twenty-one days, actual time.

County Judge Knapp, before whom Woodruff was tried, recommended a reduction of the sentence to the minimum term about a year ago, saying: "Under all the circumstances I think

that the punishment of one year and one month, it being his first offense and first and only conviction, is entirely sufficient. I have looked at the case carefully, have personally known Woodruff for more than twenty years, and can see no reason why he should be longer kept in confinement."

Judge Knapp's recommendation was not acted upon at the time, and he has now written again urging that Woodruff's term be commuted. He says: "Foreclosure has been commenced against the small farm owned by Woodruff, and he is liable to lose everything he has and become, himself and his two small boys, penniless unless he can be released before April first."

The maximum term, with the usual commutation, would expire in July next.

April 27, 1905. William Silverman. Sentenced April, 1904, to be executed; county, Warren; crime, murder, first degree; Clinton Prison. Commuted to imprisonment for life.

Granted on the recommendation of the judges of the Court of Appeals. The facts of the case are stated in the opinion of the court, 181 New York Reports 235.

The evidence given upon the trial as to the prisoner's insanity, although insufficient to establish a legal defense, did, nevertheless, show quite clearly that he was, at the time of the homicide, and for a long time before then had been, mentally unsound. It is therefore deemed inexpedient to inflict the death penalty.

May 18, 1905. Domenico Di Mase. Sentenced January 25, 1904; county, New York; crime, manslaughter, first degree; term, thirteen years and seven months; Sing Sing Prison.

Commuted to one year, three months and twenty-one days, actual time.

The prisoner is very ill, can live but a short time, and his brother desires to take charge of him. Until his conviction he had always been of good character, and although there was no real justification for his crime, he acted, in committing it, under considerable provocation; and although he has served only a comparatively small portion of the sentence, I have thought it right, in view of all the circumstances, to commute it so that he need not die in prison.

May 19, 1905. Arnold R. Weber. Sentenced January 21, 1904; county, New York; crime, grand larceny, first degree; term, three years and six months; Sing Sing Prison.

Commutated to one year, three months and twenty-nine days, actual time.

This commutation was granted on account of the prisoner's illness. He died before it was received at the prison.

May 19, 1905. Hugh Cunningham. Sentenced March 13, 1903; county, Erie; crime, burglary, third degree; term, four years and four months; Auburn Prison.

Commutated to two years, two months and seven days, actual time.

Recommended by the district attorney and the complainants. Cunningham is very ill with consumption and can not recover.

June 28, 1905. Theodore Hibbard. Sentenced May 8, 1896; county, Oneida; crime, manslaughter; first degree (two indictments); term, forty years; Auburn Prison.

Commutated to nine years, one month and twenty-one days, actual time.

Hibbard, together with three companions, all about seventeen years of age, engaged in and carried out a plan to wreck a passenger train on the New York Central Railroad, and

thereby caused the death of the engineer of the train and of one other man. All were indicted for murder in the first degree. Hibbard and two of his codefendants (who have since died) were convicted of manslaughter, and were sentenced, each, to imprisonment for forty years. The other defendant was convicted of murder in the second degree, and was sentenced to imprisonment for life.

Until the commission of this crime Hibbard had always borne an excellent character, and from the best information obtainable, it would appear that he was induced to take part in it by the over-persuasion and, it may be, the threats of his associates. At all events he was not the leader. Judge McLennan, who sentenced the four defendants, very earnestly recommends that Hibbard be released, believing that, considering his age and all the circumstances, he has been sufficiently punished. The same is also strongly urged by Judge Scripture, and by many other leading citizens of Rome, where Hibbard lived, and there is no opposition to it from any quarter. Hibbard's conduct in prison has been exemplary, he is now twenty-seven or twenty-eight years old, can have employment at once, and, as Judge McLennan says in his letter, if clemency is ever to be extended and is to be useful to him, it should be extended now.

In my consideration of the case I have not overlooked the very serious nature of the crime, nor been unmindful of the evil that might well be expected to result from dealing too leniently with it. Nothing could be more mischievous than to have it supposed that such a crime could be suffered to go without full and adequate punishment. But I am fully convinced, after a careful review of all the facts, that the punishment in this case has been adequate and that I may safely grant the commutation without prejudice to public interests.

June 30, 1905. Antonio Rego. Sentenced June 25, 1885; county, Onondaga; crime, murder, second degree; term, life; Auburn Prison.

Commuted to thirty-five years, subject to deduction for good conduct.

There is some doubt as to the real degree of Rego's crime. County Judge Ross, who is personally familiar with all the facts, and who joins with other prominent citizens of Syracuse in recommending clemency, writes that, if Rego was guilty of any crime, it was not greater than manslaughter in the first degree; that there were no circumstances in the case upon which to predicate the intent to kill which is necessary to constitute the crime of murder. Hon. Ceylon H. Lewis, who was district attorney at the time of the trial, is also in favor of clemency, and Judge Churchill, who presided, recommended several years ago that a pardon be granted.

Rego's conduct in prison has been good, and if it continues good he will receive his discharge about a year hence.

June 30, 1905. George Burse. Sentenced January 17, 1903; county, Wyoming; crime, rape, second degree; second offense; term, ten years; Auburn Prison.

Commuted to two years, five months and nine days, actual time.

Recommended by the judge, the district attorney, several of the jurors, and other citizens, residents of Wyoming County.

The judge writes that, when passing sentence, he felt that two years would be ample, but, the crime being charged as a second offense, ten years was the least he could impose. He and the district attorney concur in the opinion that the former conviction, which was for forgery, was not warranted by the facts, that Burse was really innocent of that crime, and that

justly he ought not to suffer an increased punishment under his last conviction on account of it.

June 30, 1905. Ernest Mueller. Sentenced October 16, 1903; county, New York; crime, forgery, second degree; minimum term, two years and six months; maximum term, three years and six months; Sing Sing Prison.

Commuted to one year, eight months and sixteen days, actual time.

Recommended by the complainant and other citizens. The term which the prisoner has now served, being equivalent, with allowance for good conduct, to a term of two years, is sufficient for the crime of which he was convicted, namely, the forging of a check for \$5.00.

June 30, 1905. William C. Wilson. Sentenced March 28, 1904; county, New York; crime, forgery, second degree; term, three years; Sing Sing Prison.

Commuted to one year, three months and two days, actual time.

The prisoner forged the payee's name upon a check for \$4.60. From the papers filed and from official reports I infer that that was the extent of his wrong doing, that it was his first and only criminal act, and that his previous character was in all respects good. Under the circumstances I think he has suffered all the punishment he deserved.

July 6, 1905. William O'Connor. Sentenced November 12 1901; county, New York; crime, assault, first degree; term, three years and six months; Sing Sing Prison.

Commuted to two years and twelve days, actual time.

Allowing for good conduct, the prisoner has less than eight months to serve to complete the sentence, and clemency is

recommended by eleven of the jurors and numerous other citizens. O'Connor has always been of good character, and the justness of his conviction is by no means free from doubt.

July 6, 1905. Gus Steib. Sentenced November 8, 1901; county, Schenectady; crime, burglary, third degree, and petit larceny; term, five years and six months; Clinton Prison.

Commutated to three years and eight months, actual time.

Steib gained entrance to a saloon through a window, and stole property worth \$5.75. The sentence seems unusually severe for a first offense and Steib has now served all but about two months of it, less time allowed for good conduct. Clemency is recommended by the district attorney and other citizens of Schenectady.

July 8, 1905. George Lloyd. Sentenced January 12, 1905; county, New York; crime, attempting to commit burglary, third degree; term, one year; New York Penitentiary.

Commutated to five months and twenty-eight days.

There is some doubt as to Lloyd's guilt; but, without going into that question, it seems clear that whatever part he may have taken in the crime was due wholly to the influence of an old offender. He was himself a man of good character, and the judge and the district attorney are of the opinion that his application for pardon ought to be granted.

July 25, 1905. Emil Totterman. Sentenced March 2, 1904, to be executed; county, New York; crime, murder, first degree; Sing Sing Prison.

Commutated to imprisonment for life.

While there can be no doubt that the prisoner killed the deceased, there is, in my judgment, not a little doubt as to the

degree of his guilt. His good character up to the time of the homicide has been abundantly established upon the application for clemency, and, in view of what has been proved before me on that subject, it seems utterly incredible that he could have been in full possession of his mental faculties when he committed this most extraordinary and shocking crime. On the trial no evidence whatever was introduced on the part of the defense. Had this evidence as to the prisoner's good character been placed before the jury I feel quite sure that the verdict would not have been of murder in the first degree.

Totterman served as an enlisted man in the navy during the war with Spain, and Lieutenant-Commander Twining, who was in command of the division to which Totterman was attached, and who strongly endorses the petition for clemency, informs me that Totterman was one of the small number of persons, officers and men, who were awarded medals for especially meritorious services. Rear Admiral Evans, to whom Totterman was known and under whom he served "faithfully and well," also urges that the sentence be commuted, and after a very careful consideration of all the facts, I have deemed it my duty to change the punishment to imprisonment for life.

The case is reported in 181 New York Reports, 385, where the circumstances of the crime are fully stated.

July 25, 1905. Giuseppe Patti. Sentenced November 15, 1898; county, Chautauqua; crime, murder, second degree; term, life; Auburn Prison.

Commuted to twenty years, subject to deduction for good conduct.

Granted on the recommendation of the judge, the district attorney and other citizens. It is not by any means clear that Patti did not act in self defense. At any rate a verdict of man-

slaughter would have been more satisfactory, and the punishment ought not to exceed the maximum for that offense, twenty years.

August 2, 1905. J. Fenimore Clayton. Sentenced January 17, 1885; county, Otsego; crime, murder, second degree; term, life; Auburn Prison.

Commuted to twenty years, six months and sixteen days, actual time.

Clayton killed his own daughter, a child about two years of age. There was no apparent motive or reason for the act. For a long time he had been addicted to the excessive use of intoxicating liquors, in consequence of which he was, at the time of the homicide, practically insane, and the district attorney who prosecuted him writes that he would not have been surprised had the jury acquitted Clayton on that ground. Nine of the jurors (all of the jury who are living) and many other citizens of Otsego County now unite with the district attorney in asking that Clayton be released upon the ground that he has fully atoned for his crime. During his long imprisonment his conduct has been always commendable, and some years ago, at the risk of his own life, he saved the life of a keeper of the prison upon whom one of the convicts had made a murderous assault.

The term to which the sentence is commuted is equivalent, with the usual allowance for good conduct, to a term of thirty-four years.

August 2, 1905. William A. E. Moore. Sentenced December 27, 1898; county, New York; crime, robbery, first degree; term, nineteen years; Sing Sing Prison.

Commuted to six years, six months and nineteen days, actual time.

The sentence was altogether too severe. Ten years would have been ample, and, with legal deduction for good conduct, Moore has now served that term.

August 2, 1905. Joseph Snitkin. Sentenced December 12, 1904; county, Suffolk; crime, receiving stolen goods; term, five years; Sing Sing Prison.

Commuted to three years, actual time.

The prisoner has appealed from the judgment of conviction, and, although there is no doubt of his guilt, there are certain supposed errors in the case which might be held sufficient ground for a new trial. In order, therefore, to avoid expense and delay, the district attorney has proposed to the attorney for the prisoner that the appeal be discontinued upon condition that the sentence be reduced to three years. To this the prisoner's attorney has agreed, and the judge concurring, I have deemed it proper to commute the sentence accordingly.

August 2, 1905. Richard Heyne. Sentenced January 20, 1905; county, New York; crime, false registration; minimum term, one year and three months; maximum term, two years and three months; Sing Sing Prison.

Commuted to six months and seven days.

Granted on the application of the Attorney General who conducted the prosecution and who says that it appeared upon the trial that Heyne had obtained a place as poll clerk, and "supposing it to be necessary to have a residence in the same district in which he was to act as poll clerk, he registered in that election district, although his actual residence was elsewhere in the neighborhood. On the trial he was truthful, not denying any of the facts which the People proved, but simply stating the grounds and circumstances in extenuation," and upon the close of the evidence he pleaded guilty.

It would appear that he was not a man of bad character, it may be that he did not fully realize the seriousness of the offense and perhaps the sentence might not unjustly have been more lenient, but it was thought best that "imprisonment should be imposed in order that the conviction and sentence might have some moral effect, not only upon the particular prisoner, but upon the community."

Heyne was confined in the city prison from October 25th until the date of his sentence, and since then in Sing Sing, and has therefore been imprisoned a little over nine months.

September 26, 1905. James Cooper. Sentenced March 24, 1905; county, New York; crime, grand larceny, second degree; term, nine months; New York Penitentiary.

Commuted to six months and three days.

Recommended by the judge and the district attorney. Cooper voluntarily confessed the crime, although he had not even been suspected of it. He is very repentant, and it would seem harsh and unjust to imprison him longer.

October 4, 1905. John Spry. Sentenced March 25, 1904; county, Cattaraugus; crime, subornation of perjury; term, eight years; Auburn Prison.

Commuted to one year, six months and ten days, actual time.

Spry was convicted of subornation of perjury in inducing a witness to testify falsely in behalf of the plaintiff in an action against a street railway company. The president of the company and its counsel are convinced that Spry was not the prime mover in the affair, but was the mere tool of a more intelligent and experienced person, and upon that ground they urge very strongly that he be pardoned. My investigation of the case has led me to the conclusion that their view of it is

fully warranted, and, therefore, that the sentence, which would otherwise have been no more than just, was, under the circumstances, too severe.

October 4, 1905. John Branton. Sentenced May 25, 1896; county, Kings; crime, burglary, second degree, and forgery, second degree, second offense; term, twenty years; Sing Sing Prison.

Commuted to nine years, four months and ten days, actual time.

Branton pleaded guilty to two indictments, one charging him with forging a check for \$15, and the other with burglary in entering a dwelling house and stealing a small alarm clock, worth, perhaps, fifty cents.

Both crimes being charged as second offenses the punishment imposed was necessarily severe, but it would, I think, be unjust to compel him to serve the whole term. That already served, which is legally equivalent to a term of fifteen years, is ample.

October 4, 1905. Edgar E. DuVeau. Sentenced November 30, 1903; county, New York; crime, attempting to commit robbery; term, ten years; Sing Sing Prison.

Commuted to one year, ten months and four days, actual time.

The prisoner devised a plan to commit a robbery and proposed to a companion that he should assist in carrying it out. This his companion agreed to do, but immediately informed the public authorities, under whose instruction he proceeded, with the prisoner, to make the necessary preparations, and when everything was in readiness and, as the prisoner supposed, the crime was about to be committed, he was taken into custody.

He deserved punishment, but, in view of his previous good character, that imposed seems unduly severe. The district

attorney, with whom the judge concurs, is of the opinion that it would be just to release him after service of a two years term, and that term he has now served, the usual allowance being made for good conduct.

November 10, 1905. Morris Schoenholz. Sentenced October 18, 1895; county, New York; crime, arson, first degree, second offense; term, forty-eight years; Sing Sing Prison.

Commuted to ten years and twenty-five days, actual time.

Since his conviction Schoenholz has been of material assistance in bringing to justice a number of persons guilty of the crime of arson in the city of New York, in consideration of which Governor Odell reduced the sentence to thirty years, subject to statutory commutation for good behavior. This was done pursuant to the recommendation of the district attorney and of Judge Fitzgerald, before whom Schoenholz was tried.

This further commutation, releasing Schoenholz at once, is granted upon the application of the assistant district attorney who procured the conviction of the persons referred to, and who urges very strongly that the services rendered by Schoenholz justly entitle him to it.

November 10, 1905. Edward Camile. Sentenced October 6, 1898; county, Suffolk; crime, arson, first degree; maximum term, forty years; Elmira Reformatory. Transferred to Clinton Prison.

Commuted to seven years and twenty-four days, actual time.

This prisoner was convicted of setting fire to a dwelling house, the residence of his employer with whom he was living. Very little damage was done, the fire being immediately discovered and easily extinguished. Camile was sixteen years old at the time, and, although he pleaded guilty, there is not a little

doubt as to whether he really intended to set the house on fire. He remained at the reformatory about five years and was then transferred to Clinton Prison. He has been greatly over-punished, and justice demands his release.

November 29, 1905. Edward Roddy. Sentenced January 6, 1904; county, New York; crime, grand larceny, second degree; minimum term, two years; maximum term, three years; Sing Sing Prison.

Commutated to two years and four months, subject to deduction for good conduct.

There is some doubt as to the validity of a re-sentence imposed in this case, and, in order to avoid all question as to the lawfulness of it, and of discharging the prisoner in accordance with it, I have thought it wise to grant this commutation.

December 20, 1905. Giuseppe Patti. Sentenced November 15, 1898; county, Chautauqua; crime, murder, second degree; term, life; Auburn Prison.

Commutated to seven years, one month and six days, actual time.

On July 25th I commuted the sentence to twenty years, subject to legal deduction for good conduct.

Upon further consideration, and upon the very earnest recommendation of the judge and the district attorney, who are convinced that Patti is suffering wrongfully, I have concluded to further commute the sentence so as to release him at once.

December 28, 1905. George H. Baxter. Sentenced June 10, 1903; county, Albany; crime, forgery, second degree; minimum term, two years and six months; maximum term, three years; further term, two years and six months.

Commutated to two years, six months and eighteen days, actual time.

Recommended by the judge, the district attorney and the complainants. The minimum term imposed, which the prisoner has now served, is deemed a sufficient punishment.

December 29, 1905. Patrick McMahon. Sentenced October 30, 1896; county, New York; crime, murder, second degree; term, life; Sing Sing Prison.

Commutated to twenty-five years, subject to deduction for good conduct.

The homicide was the result of a sudden fight between the prisoner and two other persons, for which he does not appear to have been any more to blame than they, and there was no very satisfactory proof of an intent to kill. Hon. John F. McIntyre, who, as assistant district attorney, conducted the prosecution, writes: "I feel now as I did then, that the ends of justice would have been substantially conserved had the jury rendered a verdict of manslaughter."

Eight of the jury have joined with other citizens in asking for a commutation of the sentence, and upon a careful consideration of all the facts, I am of the opinion that it ought to be granted, and that the term to which the sentence is reduced will fully answer all the demands of justice.

December 29, 1905. Henry McMenemin. Sentenced April 15, 1903; county, Albany; crime, robbery, second degree; term, thirteen years and three months; Clinton Prison.

Commutated to seven years, subject to deduction for good conduct.

Granted on the recommendation of the district attorney and other citizens, on the ground that the sentence was too severe.

RESPITE

June 18, 1905. Emil Totterman. Convicted of murder first degree, in the county of New York, and sentenced March 2, 1904, to be executed. Conviction affirmed by the Court of Appeals, and execution to take place during the week beginning June 19, 1905.

Respite until August 1, 1905.

Granted to afford sufficient time for the consideration of an application for a commutation of the sentence.

Public Addresses and Correspondence
OF
FRANK W. HIGGINS
Governor of the State of New York
DURING THE YEAR
1905

ADDRESSES

INAUGURAL ADDRESS OF FRANK W. HIGGINS, GOVERNOR, JANUARY 2, 1905

The inauguration ceremonies attending the assumption of office as Governor of the State of New York by Frank W. Higgins, were held in the Assembly Chamber at the Capitol in the city of Albany on Monday, January 2, 1905. The retiring Governor, Benjamin B. Odell, Jr., delivered a speech of welcome to Governor Higgins. Governor Higgins in response said:

GOVERNOR ODELL:

I thank you for the cordiality of your welcome—approbation from one of your skill and experience is praise indeed. As Governor of New York you have for the past four years been one of the prominent figures in our national life. You have disdained the empty glories of things said, and have striven only to leave behind you an honorable record of things done. If your acts have not always won for you the unsought praise of popularity, no one can gainsay your power of initiative, your force and determination, your untiring energy, and your sense of personal responsibility.

Upon your recommendations direct taxation has been practically abolished, and departmental administration has been revolutionized. By your veto salutary legislation has been protected from mutilation, and reckless legislation has been

checked. Criticism and condemnation have not swerved you from your purpose. Your plans have been fearlessly and wisely formulated and thoroughly and competently executed. You retire from office with the proud consciousness that you have rendered faithful service to the State that will long be remembered in its history.

FELLOW CITIZENS:

It is an old but useful maxim that "It is not for him to boast who puts his armor on before the battle but for him who puts it off after the victory is won." With an abiding sense of the responsibilities imposed upon me by the constitutional oath faithfully to discharge the duties of the office of Governor to the best of my ability, I begin my administration with the hope that at the end of my term I shall have proved not unworthy of the confidence you have bestowed upon me. The overwhelming success of a political party at the polls should be to its representatives a counsel of moderation rather than an incentive to excess. A certificate of election is not a letter of marque, authorizing the successful candidate to urge licensed piracy against his political opponents. The welfare of the whole people must be the aim and goal of government. The exploitations of State or City for partisan advantage or private gain must be sternly rebuked. If, in the intoxication of victory, we abuse our delegated power, we shall speedily and deservedly forfeit it.

With the constantly growing demands upon the State for the exercise of new functions and the extension of old ones, the problem of limiting the outgo and increasing income without, on the one hand, crippling the institutions of the State or, on the other, laying undue burdens upon the taxpayers, becomes one of increasing difficulty and importance. Notwith-

standing the attractive forms that taxation is sometimes made to assume in the eyes of the ordinary citizen, and notwithstanding the many meritorious demands upon the State, we should be sedulous to retrench rather than to tax; to economize rather than to be liberal. True economy is to be determined not by the sum total of expenditures alone, but by the results obtained from such expenditures and by a consideration of the resources of the State. An excess of running expenses over receipts indicates bad public finance and should be corrected. The just obligations of the State must be honorably and promptly met and neither denied, evaded, nor delayed, but it should be our earnest desire to balance the account by securing a reduction of expenditures rather than by an increase of revenues wherever possible.

In performing the duties of the Executive Office, I shall freely seek the assistance and expert counsel of those who have made a study of any of the multifarious branches of governmental activity. I shall welcome the suggestions of all citizens. Ultimately, however, with God's help I shall jealously guard my prerogative of personal independence, and whether for good or for evil, I shall assume responsibility for all my official acts.

ADDRESS TO THE NATIONAL GUARD ASSOCIATION OF THE STATE OF NEW YORK AT ALBANY, JANUARY 23, 1905.

Among the powers of the Governor first enumerated in the Constitution is that which declares that he shall be commander in chief of the military and naval forces of the State. The first duty devolving upon a newly elected governor is that of selecting his staff. I therefore feel that, for a civilian, my

connection with the National Guard is intimate and responsible.

In these times of peace the functions of the commander in chief are agreeable rather than arduous. In my study of the Constitution I find, however, that all able-bodied male citizens between the ages of eighteen and forty-five shall constitute the State militia; that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, equipped, disciplined and ready for active service; and that the State may freely contract debts to repel invasion, suppress insurrection or defend the State in war. I am, therefore, compelled at times to imagine the consequences of a call to arms, when the grim visage of war darkens the land, when the State is invaded or in danger, and when it becomes a serious affair to command the military and naval forces of the State.

It is my sincere hope that my administration may be one of profound peace, undisturbed by any foreign enemy or domestic uprising, and that I may not be called upon to summon the military forces under my command to the field of action. In this desire I am sure I have the sympathy of every true soldier. But should the stern necessity arise, the people of the State will find, in the future as in the past, that its honor is safe in the hands of its organized militia.

The days of pomp and circumstance, of a militia made up of sunshine soldiers and summer patriots, have passed away. Preparedness for active service is the first aim of our military organization. The ranks of our companies are filled with the flower of our youth, who subject themselves cheerfully to the severe discipline of camp and field, to perfect themselves in the school of arms. Our officers emulate the skill and expert knowledge of the regulars. The manly qualities of courage

and self-sacrifice have never been lacking in our American volunteers, but the effectiveness of our military arm has never been greater than to-day.

To her citizen soldiery the State cheerfully intrusts her defence from invasion or domestic violence.

**ADDRESS AT THE AMEN CORNER DINNER, NEW
YORK CITY, FEBRUARY 18, 1905.**

We of the rural districts in our trips to the city, have often turned our footsteps toward the Amen Corner, to listen to words of wisdom to guide us in the narrow way.

There we have found that the gentlemen who frequent the corner are not idealists, but are content to take the world as it is and to deal with it accordingly. They view alike the simple life and the strenuous life with a suspicious eye. No self-established standards of merit pass current in their circle. The man who makes great things happen in a great way may win their respect; but, like Kipling's American, they greet imperturbably the embarrassed gods, nor fear to shake the iron hand of Fate.

The people of the Empire State are a much governed people. The old idea has become obsolete that government should exercise the least possible restraint on individual freedom of action. The power that is called forth to curb the strong and shield the weak is no longer the Church but the State. A careless analysis of our codes and statutes reveals a great number of prohibited acts, beyond the power of any layman to classify or understand.

Reverence for law makes our civilization possible. Peaceful acquiescence in the determination of the courts, in contro-

versies between individuals involving great constitutional questions, characterizes our national life as one of liberty under the law.

Are we not tending toward the destruction of that law abiding spirit on which our institutions depend? Is not this tendency the direct and inevitable result of the multiplication of statutes and increase of penal offences?

The type of public official who betrays his trust, who uses his position as if he were the master and not the servant of the people, and who grants dispensations for violations of the law to political favorites or for personal ends, flourishes under a system of regulative statutes spasmodically and unevenly enforced.

Respect for law gives way to the uneasy feeling that political protection is a safer reliance than the justice of one's cause; that statutes are passed for the punishment of indiscretion rather than guilt, and that the unquestioning support of a powerful leader pays better than the unselfish service of the people.

The Roman tyrant, who caused his statutes to be engraved in fine letters and set on high where his subjects could not read them was no more unjust than a people who allow their own laws to be broken daily, and who punish violations thereof only when prompted thereto by prejudice or caprice.

If a penal statute is enacted without ample provision for its enforcement by the agencies of prevention, detection and punishment, if the officials entrusted with its enforcement are not held to strict accountability, if the citizen does not discharge his duty as witness and juryman with fearlessness and disinterestedness, and if the courts care more for nice quilllets of the law than for substantial justice—the spirit of lawlessness will flourish.

If, on the other hand, the Legislature is discreet, the public official incorruptible, the citizen patriotic and the courts just, then

“Sovereign law, that state’s collected will
Sits empress, crowning good, repressing ill.”

ADDRESS AT THE LEGISLATIVE CORRESPONDENTS’ DINNER, ALBANY, MARCH 16, 1905.

MR. TOASTMASTER AND GENTLEMEN: It gives me great pleasure to be present with the Legislative Correspondents this evening and to join with you in your annual banquet.

I have had the privilege of meeting you daily at noon and again at five o’clock, and I think our interviews have been mutually beneficial and interesting. I have freely imparted information as to the past, present and future policies of the Chief Executive, and you have generously aided me with your advice and at times with your consent.

The relations between the Governor and the legislative correspondents are most cordial, based as they are on mutual confidence and regard born of a long acquaintance.

The newspapers have recently been scolded for their lack of political influence in the late campaign. The papers that I preferred to read during that interesting period exercised, in my judgment, a potent and wholesome influence for good government. Their discussions of the issues of the hour were calm, truthful and dispassionate, and met with a ready response from the fair minded American people. If other journals sought to influence their readers by appeals to prejudice, I can only say that they were justly rebuked, and that their failure was richly deserved.

Seldom do we now find men who are without views on any public question before they read the editorials of their party organs. The correspondent is the man who shapes public opinion. If he is fair and candid, the man in public life cannot complain. If he is partisan or prejudiced, time will set things right.

Our legislative correspondents have seen men come and go. They have seen the unrighteous flourish for a time and virtue cast ignominiously down. None know better than they that in the long run honesty and ability will together win the day. Honesty alone may be impotent; ability alone may be perverted to base uses, but when knowledge of the right is coupled with courage to do the right the forces of evil cannot long prevail.

There are those who would curb the freedom of the press; yet that freedom of expression, in spite of its tendency towards license, is the safeguard of the nation's liberties. Criticism of public officials will never be regarded as petit treason in this country. With power comes responsibility. If you, gentlemen of the press, allow the commercial interests of your paper to control your pens, if you present any person before the bar of public opinion from envy, hatred or malice, or leave anyone unrepresented through fear, favor, affection or reward or hope thereof, you degrade an honorable calling and justify those who say that the press has lost its power. But if you present all public matters truly as they come to your knowledge to the best of your understanding, you wield a superlative power and perform a patriotic service.

**ADDRESS TO A COMMITTEE REPRESENTING
THE AGENTS OF THE EQUITABLE LIFE AS-
SURANCE SOCIETY AT ALBANY, APRIL 21,
1905**

In response to the committee representing the agents of the Equitable Life Assurance Society, Governor Higgins said in Albany on April 25, 1905:

GENTLEMEN: I realize fully that this is a very serious talk. I realize fully that the policy holders of this company have been led to believe that it was mutual in its character. I would be glad to do anything within reason that I could do to bring about mutualization. But I desire to call to your attention the fact that difficulties that arise between citizens in the State of New York, very fortunately—I would say, rather than unfortunately—cannot be settled by the Governor nor by the Legislature. That those questions of difference have to be settled in this State by the courts.

The plan of mutualization which you spoke of a few moments ago, was adopted, as I understand it, by the board of directors of the Equitable Life and placed in the hands of the Superintendent of Insurance—a gentleman in whom I have unlimited confidence as to capacity and as to integrity. A few days ago a suit was brought by Mr. Lord, questioning the right of the superintendent to mutualize this company, to deprive him as a stock holder of the power that his stock gave to him and of the benefits which he claimed that he might derive were mutualization, not to take effect. That matter is to-day in the courts—in my opinion in the place where it should be settled and the only place where it can be

settled as to the relative rights of the stockholder and the policy holder of the Equitable Life.

I, of course, am unable to judge as to what the result of that suit may be. I am not a lawyer and I cannot advise you from a lawyer's standpoint. The question has been raised as to whether the Legislature could not alter the charter of the Equitable Life Assurance Society, changing its character. I think it is perhaps true that it could. It could alter its charter, but the question still remains as to whether the stockholders, if they saw fit to reject the altered charter, could not refuse to act under it; and in that case they would be compelled to go into the hands of a receiver or close up the business of the Equitable Life.

There are a few attorneys that are not at the present time retained by the Equitable, and I have taken occasion to consult some of them in relation to this unfortunate, very unfortunate situation, I feeling that it was not only unfortunate for the policy holders but unfortunate for the State of New York that this situation could exist under our insurance law. I realize that it is not only unfortunate for the Equitable but it is unfortunate for all insurance interests in this country and particularly in the State of New York.

However, there are those in the legal profession who are inclined to believe that you cannot, by act of the Legislature, compel the stockholders of the Equitable Life Assurance Society to accept mutualization in its broadest lines without their consent. That I give you simply as an opinion as it comes to me.

I cannot tell you what the Legislature of the State of New York will do. For the short period that I have held this office, I have endeavored to separate the executive department, so far as possible, from the legislative and the judicial. I

have left it to the Legislature to determine what acts it would send to me, only recommending by public message, and have then taken my time to consider the propositions that it has presented to me for my approval or disapproval. I do not feel at the present moment that I can assure you as to whether the time will come in the immediate future that it will seem to me wise to communicate with the Legislature and ask it to pass any particular bill in reference to the Equitable Life; but I can say to you this, with the utmost frankness and sincerity that at all times I shall be interested more largely in the interests of the policy holders of the Equitable Life Assurance Society than in the interests of any other person or party connected with it. And if I come to the conclusion that I can further the interests of those policy holders—if I should come to that conclusion, you can rest assured that no act will be left undone by me that will bring about better conditions for that society.

ADDRESS TO THE INTERNATIONAL BROTHERHOOD OF RAILWAY TRAINMEN IN BUFFALO, MAY 13th, 1905

GENTLEMEN: Less than one hundred years ago, amid the cheers of the incredulous spectators, a locomotive engine was run on a railway for the first time on this continent. To-day the railroads embrace a capitalization of \$15,000,000,000. They carry yearly on their 300,000 miles of track nearly 700,000,000 passengers. To operate these agencies of traffic and transportation an industrial army of nearly 1,500,000 men braves danger, hardship and fatigue and of that great army less than one per cent. are officers of any sort. These men organize into brotherhoods of locomotive engineers, firemen,

conductors, trainmen and switchmen. These brotherhoods seek to put labor on an equal footing with the autocratic power of money to obtain prompt payment of fair wages and to protect life and limb for their members.

In these efforts it has been my privilege to co-operate by introducing and advocating proper laws for the relief and protection of railroad employees. No more intelligent citizens of higher ideals and sincere aims can be found in the land than you who represent the highest type of organized labor.

The State of New York welcomes the International Brotherhood of Railway Trainmen. It looks to you to curb on the one hand the reckless and discontented employee and on the other the selfishness of the employer. Long study of the labor problem leads me to the conclusion that the outrages, which have at times disgraced our industrial wars, in the first place are no more to be condemned than the injustice of the short-sighted capitalists, and in the second place are abuses of a beneficial system. To the perfection and development of your organizations and to a better understanding of your purposes, I look for a solution of the labor question. Every good citizen strives to make this country of ours a better place to live in and a place where rights are respected and duties are insisted upon. A spirit of mutual understanding and regard and readiness to act with reasonableness, has manifested itself among the leaders of labor and the captains of industry. Representatives of the public, of organized labor, and of the employers, meet to settle differences between the employers and the labor unions, and the day is not far distant when the unhappy struggles between employee and employer will cease to disturb industry.

While it is but a weak and sentimental phrase to say that the interests of labor and capital are identical; while these interests are doubtless conflicting; the public demands that they be adjusted in peace and equity and not by violent means. Our free institutions cannot long endure if the rights of capital become the wrongs of labor or if the rights of labor carry no reciprocal duties of decency, fairness and good order.

Gentlemen, I cordially welcome you to the Empire State.

CORRESPONDENCE

LETTER TO ATTORNEY-GENERAL MAYER RELATIVE TO TRESPASSES UPON THE STATE FOREST PRESERVE

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, March 24, 1905

HON. JULIUS M. MAYER,

Attorney-General, Albany, N. Y.

Sir: It having been brought to my attention that numerous trespasses by cutting timber have recently been committed upon the State Forest Preserve, and that in many of said cases settlements have been reached by confession of judgments for damages by the parties, or agents of the parties, responsible for such trespasses, and that the timber has thereafter been removed from the State preserve by such trespassers; and

It appearing to me that the whole subject requires careful investigation, in order that the interests of the State may be protected,

You are hereby requested, and required, to take charge of the legal business of the State in relation to said trespasses; to conduct investigations for the purpose of determining whether any persons have been guilty of any criminal acts for which prosecutions should be instituted and if so, to appear before such court or courts as may be necessary for the pur-

pose of instituting and prosecuting such criminal actions or proceedings as you may deem proper; and also to institute and prosecute all actions necessary to prevent the removal and secure the recovery of said timber cut upon the State Forest Preserve in violation of law.

If owing to the amount of legal work which may be necessary, you deem it proper that counsel be designated to assist in the transaction of the legal business above referred to, such course will meet my approval.

Yours truly,

FRANK W. HIGGINS

LETTER TO THE MAYOR OF NEW YORK REGARDING THE WATER SUPPLY BILL

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, April 19, 1905

THE MAYOR, New York.

Sir: In reply to your telegram, I have to say that I have not taken the position that the water bill must be further amended in the manner indicated by you. However, I have said that, in my judgment, the proposition contained in the bill that the board of water supply may sell power, and also water for manufacturing purposes, when not needed for city purposes, is a novel one, not contained in the present city charter, and not germane to the main purpose of your bill.

The city has asked for legislation to enable it to obtain the necessary additional supply of pure and wholesome water. I

have seconded your efforts in this direction. The city now has as great powers to acquire lands for an additional water supply under the charter as it will have under the Tompkins bill, except that the new commission may be a more efficient agency than the old commissioner. I have sustained your position in regard to the new commission with unlimited tenure of office. It now appears that the city seeks, under the provisions of section 26 of the bill, authority to take, in addition to its own necessary water supply, a supply of water to be sold for manufacturing purposes, and it also seeks authority to go into the business of power development and transmission.

These activities may or may not be proper municipal functions. This extension of the principle of municipal ownership demands serious consideration on its own merits and not as a mere incident to a general plan.

The localities suffer serious inconvenience, which can be justified only by the plea of necessity, when their lands are taken to furnish the city with water for domestic and municipal purposes. They should not be put to the further inconvenience of having their water power and water not needed by the city taken away from them to be sold by the city for revenue.

The Legislature will consider carefully the sweeping innovations contained in section 26 of the bill before adopting them.

Yours sincerely,

FRANK W. HIGGINS

**LETTER TO DISTRICT ATTORNEY JEROME OF
NEW YORK, REGARDING THE EQUITABLE
LIFE ASSURANCE SOCIETY OF NEW YORK**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 22, 1905

HON. WILLIAM TRAVERS JEROME,

District Attorney of New York County, New York.

Dear Sir: I herewith inclose for your consideration a copy of the preliminary report of the Superintendent of Insurance upon the affairs of the Equitable Life Assurance Society of New York. The findings set forth in the report are based on evidence taken by the superintendent under the Insurance Law. If, in your judgment, any of the alleged facts, established by legal evidence, would constitute criminal misconduct in the county of New York on the part of any person, I will, if you desire, request the superintendent to submit to you the evidence taken before him.

Yours truly,

FRANK W. HIGGINS

**LETTER TO SHERIFF DEWEY, OF ROCKLAND
COUNTY, CONCERNING ALLEGED VIOLA-
TIONS OF THE LIQUOR TAX LAW**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, June 30, 1905

MR. WILLIAM DEWEY,

Sheriff of Rockland County, Nyack, N. Y.

Dear Sir: I am in receipt of your report dated June 28th, in response to my request for information as to alleged violations of the liquor tax law in Rockland county, and I am obliged to you for your prompt reply.

I take this opportunity to correct an impression which you have formed, as stated in your report, that violations of the liquor tax law are more directly under the charge of the State Excise Department. You are the chief executive officer of your county, and as such are responsible for the proper enforcement of the law. It is your duty to prevent violations of the liquor tax law as it is your duty to prevent any breach of the peace or other act of disorder in your county. The existence of a State Excise Department in no way lessens your responsibility in this regard.

Trusting that this suggestion may lead you to act vigilantly in reference to the unlawful sale of liquors, I remain,

Yours truly,

FRANK W. HIGGINS

LETTER TO GOVERNOR PENNYPACKER OF
PENNSYLVANIA REGARDING A CONGRESS
TO CONSIDER DIVORCE

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, July 31, 1905

HON. SAMUEL U. PENNYPACKER

Governor of Pennsylvania

Harrisburg, Pa.

SIR:

I am in receipt of your communication of July 24th, inclosing a copy of an act authorizing the appointment of a commission to codify the laws relating to divorce, and to co-operate with other states in securing uniformity of divorce legislation in the United States.

I have no authority to appoint delegates to a congress to meet at Washington to consider the subject of divorce; but I think the matter falls properly within the jurisdiction of the Commissioners for the Promotion of Uniformity of Legislation in the United States, and I have referred your communication to Walter S. Logan, of 27 William street, New York city, who is the senior commissioner in this State, and have requested him to communicate with his colleagues and, if possible, to attend such a congress, should it meet, on behalf of the State of New York.

Yours respectfully,

FRANK W. HIGGINS

**LETTER TO SURROGATES CALLING ATTENTION
TO THE CONSULAR CONVENTION BETWEEN
THE UNITED STATES AND ITALY**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, September 27, 1905

TO ALL SURROGATES:

Your attention is directed to the following extract from the Consular Convention, stipulated on the 8th day of May, 1878, between the governments of the United States and Italy:

ARTICLE XVI.

“In case of the death of a citizen of the United States in Italy, or of an Italian citizen in the United States, who has no known heir, or testamentary executor designated by him, the competent local authorities shall give notice of the fact to the consuls or consular agents of the nation to which the deceased belongs, to the end that information be at once transmitted to the parties interested.”

Complaint has been made to me by the Consul-General of Italy that the requirements of said article are disregarded, and that in consequence the rights and interests of his countrymen are not attended to.

You are, therefore, requested to comply with the law in this respect.

FRANK W. HIGGINS, Governor.

A true copy.

FRANK E. PERLEY

Secretary to the Governor

**LETTER TO M. F. IHMSEN REGARDING THE
STORAGE OF BALLOTS IN NEW YORK AR-
MORIES**

STATE OF NEW YORK

EXECUTIVE CHAMBER

Albany, November 11, 1905

M. F. IHMSEN, Esq., Secretary,
Hoffman House, New York City.

My Dear Sir: I am in receipt this morning of a communication from you, by the hand of Mr. J. W. Hamer, who called upon me for the purpose of requesting that I designate armories in Manhattan, the Bronx, Kings and Queens counties for the storage of ballots cast at the recent municipal election; also requesting that I order a sufficient military guard to protect them.

As to the first request, I find in the military code, the following provision:

"On occasions of State or national importance, upon the recommendation of the major general commanding the National Guard, * * * the Governor shall have the power to allow the use of armories for such purposes as may appear expedient to him * * * on the delivery to the commanding officer of the brigade in whose jurisdiction the armory is located, of a bond approved by him and executed by the persons, associations or corporations proposing to use the armory, in an amount approved by him, conditioned that such persons will indemnify and save harmless the State and the county in which the armory is located; * * * and also to pay all

expenses of heating and lighting, and for janitor and for other services connected with such use."

It would seem, therefore, that application for the use of the armories desired, should first be made to General Charles F. Roe, major-general commanding; and I shall be glad, upon his recommendation, to exercise the power conferred upon me by the section of the Military Code above quoted.

As to the second request, ample provision is made in the Election Law for a recanvass, through the machinery of local courts, of the vote cast in any election district in the State. This is purely a judicial proceeding. It does not appear to me that a condition of insurrection, invasion, tumult, riot or breach of the peace exists in the city of New York, which is a condition which must precede the active interference by the Governor with the local authorities in the administration of law in the various localities of the State; especially in view of the fact that section 86 of the Military Code makes ample provision "in case of any breach of the peace * * * or resistance to process of this State, or imminent danger thereof, for a justice of the Supreme Court or other local judicial authority to call for aid upon the commanding officer of the National Guard or Naval Militia stationed therein or adjacent thereto." Proceedings of this character should always be conducted by the courts, especially when ample provision is made for every emergency that may arise in the proceedings.

I must decline to interfere with the disposal of the ballot boxes, or to determine where they shall be stored. I am willing to give my consent, when proper application is made in accordance with the military Code, for such use of the armories in this emergency as the court may feel disposed to make.

Yours truly,

FRANK W. HIGGINS

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